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Procurement Law

(TRANSPORTATION INCLUDED)



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UNITED STATES GENERAL ACCOUNTING OFFICE

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*B-212926, B-212926.2 Apr. 2, 1984 84-1 CPD 369
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE*

GAO cannot question Navy's determination to issue sole-source contracts for roofing construction and repair projects for naval facilities on Adak Island--an island located 1,200 miles from Anchorage, Alaska, at the end of the Aleutian Island chain.

*B-213294, B-213294.2 Apr. 2, 1984 84-1 CPD 370
BIDDERS--UNSUCCESSFUL--ANTICIPATED PROFITS*

There is no legal basis to pay anticipated profit to an unsuccessful bidder.

BIDS--PREPARATION--COSTS--NONCOMPENSABLE--NONRESPONSIVE BID

A disappointed bidder is not entitled to recovery of bid preparation costs where its bid properly was rejected as nonresponsive.

*BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED*

Protester's bid which offered to furnish other than the exact product called for in the solicitation was properly rejected as nonresponsive. Although subsequent to the rejection of the bid the agency determined that the solicitation specifications were overly restrictive, the agency may not make award to the protester under that solicitation because it is improper to award a contract on a basis other than that upon which bids were solicited.

*B-213298 Apr. 2, 1984 84-1 CPD 371
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--TIME FOR
SUBMISSION OF INFORMATION*

Bidder who certified in its bid that it was a dealer may qualify either as a manufacturer or dealer prior to award since the bidder made a binding offer to furnish products manufactured by a small business which the bidder can do either as a manufacturer or regular dealer.

*B-213298 Apr. 2, 1984 84-1 CPD 371 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--WALSH-
HEALEY ACT*

GAO's role in a protest concerning manufacturer or regular dealer status is limited to considering whether contracting officer complied with procedural requirements.

Where protest was filed prior to award, contracting officer should have complied with requirements of DAR 12-604(b)(2) (1976 ed.), which requires contracting officer to notify protester of intent to make award and to hold award in abeyance pending appeal of bidder's status as manufacturer or dealer to Department of Labor (DOL), or DAR 21-604(c), which provides for forwarding case to DOL after award.

*B-213347.2 Apr. 2, 1984 84-1 CPD 372
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

Request for reconsideration is dismissed where the protester presents a new basis for protest--whether the contractor will be able to produce the scanner system it offered--which appears untimely and, in any event, concerns (1) an agency's affirmative determination of responsibility which GAO does not review absent circumstances not applicable here and (2) contract administration which GAO also does not consider.

*B-213682 Apr. 2, 1984 84-1 CPD 373
CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS*

A protest of the proposed award of a subcontract is dismissed because the protest does not meet any of the circumstances under which GAO considers protests of subcontract awards.

*B-213924 Apr. 2, 1984 84-1 CPD 374
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED*

Where protester was not included on Bidders Mailing List and contracting officer refused to extend bid opening date to enable that firm to submit a bid, bids need not be

resolicited since there was a significant effort to obtain competition, bid prices were reasonable, and there was no deliberate attempt to preclude protester from bidding.

*B-210411.2 Apr. 3, 1984 84-1 CPD 376
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

A private person who does not represent any entity participating in a questioned procurement, but rather requests reconsideration of a protest as "an aggrieved taxpayer," is not an "interested party" under GAO's Bid Protest Procedures since he does not have a direct economic interest in the procurement.

*B-212017 Apr. 3, 1984 84-1 CPD 377
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--ADMINISTRATIVE APPEAL UPHOLDING DETERMINATION
TO PERFORM IN-HOUSE--REASONABLENESS OF APPEAL DETERMINATION*

Protest challenging A-76 cost comparison result favoring in-house performance is denied where the protester cannot demonstrate that its reliance upon an apparently ambiguous RFP so influenced its offered price that the cost comparison outcome was materially affected.

*CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--WAIVER OF PROCEDURES*

Agency was not required to use certain revised A-76 cost comparison procedures apparently in effect when the RFP was issued where the activity conducting the cost comparison had been granted a waiver by higher command, and an RFP amendment informed all offerors that those procedures would not be used.

GAO will not review a contracting agency's decision to grant a particular installation a waiver from using revised A-76 cost comparison procedures, since the decision is simply the exercise of an executive agency's discretionary authority, which GAO will not question.

B-213878 Apr. 3, 1984 84-1 CPD 378

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Where the RFP clearly evidences the contracting agency's characterization of the required tasks, a protest that it was improper to evaluate proposals based on this characterization lacks merit.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW*

Contracting agency's determination that a proposal is technically unacceptable is a matter of agency discretion which will not be disturbed unless it is shown to be unreasonable or in violation of the procurement laws and regulations.

B-214524 Apr. 3, 1984 84-1 CPD 379

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
STATUS OF BIDDERS*

Procuring agency may properly award contract to second low bidder, under total small business set-aside, where low bidder has been found previously to be other than small and has not been recertified as small business by SBA as of date of bid opening.

B-214680 Apr. 3, 1984 84-1 CPD 380

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protest concerning small business size status is not for consideration by GAO since exclusive authority to determine such matters for federal procurement purposes is statutorily vested with the Small Business Administration.

B-213788 Apr. 4, 1984 84-1 CPD 381

CONTRACTS--NEGOTIATION--COMPETITION--RESTRICTIONS--GEOGRAPHIC

Geographic restrictions on competition are permitted as long as they are adequately justified based on the agency's minimum needs and as long as they do not unduly restrict competition. GAO finds that while the agency has a security need to impose a geographic restriction on location of

hotels furnishing rooms for Secret Service agents who are protecting presidential candidates, the agency did not sufficiently define the exact scope of the geographic restriction in making the award.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--IMPROPER--ON BASIS OTHER THAN IN RFP

While procuring agencies have broad discretion in determining the evaluation plan they will use in a negotiated procurement, they do not have the discretion to announce in the solicitation that one plan will be used and then follow another in the actual evaluation. GAO finds that the procuring agency evaluated the offerors' proposals on the basis of criteria not specified by the solicitation.

B-213948 Apr. 4, 1984 84-1 CPD 382

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Complaint alleging that a firm which was awarded a contract under a "total Buy-Indian set-aside" has "a negative view in hiring Indians" and "has failed to hire qualified Indians who applied for positions with this firm" relates to contract administration and therefore is not for resolution under GAO's Bid Protest Procedures.

B-214469 Apr. 5, 1984 84-1 CPD 383

BUY AMERICAN ACT--BUY AMERICAN CERTIFICATE--LEFT BLANK

Failure to complete Buy American certification may be waived as minor informality since omission does not relate to bid responsiveness.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest that bidder is incapable of providing products conforming to solicitation requirements is dismissed since it concerns challenge to bidder's responsibility which GAO does not generally review.

B-214743 Apr. 5, 1984 84-1 CPD 384

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
UNDER DISPUTES CLAUSE*

Whether contractor is entitled, after award, to be furnished certain engineering drawings involves a matter of contract administration, which is the responsibility of the procuring activity and not the General Accounting Office.

B-213433 Apr. 6, 1984 84-1 CPD 385

*CONTRACTS--PROTESTS--ADMINISTRATIVE ACTIONS--OUTSIDE SCOPE
OF PROTEST PROCEDURE*

Protester's allegation that government's offer to sell surplus federal property adjacent to protester's leased property interferes with protester's property rights is not a proper matter for consideration under GAO bid protest authority.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPRENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging impropriety apparent in the solicitation received by contracting agency after bid opening is untimely and not for consideration on the merits under GAO Bid Protest Procedures. Fact that protest initially was sent to wrong agency does not toll GAO timeliness requirements.

*CONTRACTS--PROTESTS--MERITS--CONSIDERATION BY AGENCY--
DISMISSAL BY GAO--NOT PRECLUDED*

Contracting agency's consideration on the merits of an untimely protest does not prevent GAO's dismissal of same protest.

CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

A request for clarification cannot be substituted for the necessity of a formal protest.

BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--INFORMATION

The distinction between responsiveness, i.e., whether a bidder unequivocally offers to provide supplies or services in conformity with the material terms of the solicitation, and responsibility, i.e., whether a bidder has the apparent ability and capacity to perform the contract requirements, is not always easy to draw, and the interpretation of the procuring agency must be carefully considered as it is normally in the best position to set forth what was intended.

BIDS--INVITATION FOR BIDS--AMBIGUOUS--MINORITY HIRING GOALS

Bidder who secured, prior to bid opening, potential minority business enterprise subcontractors sufficient to meet goal set forth in invitation for bids (IFB) was not prejudiced by any ambiguity in the IFB as to whether attainment of the goal or a demonstration of the bidder's good faith efforts to do so must occur prior to bid opening or between bid opening and award of contract, because it is inherent in provision permitting award on basis of demonstrated good faith efforts that not every bidder may achieve the goal and because record shows that prior to bid opening awardee had made a good faith effort.

BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--INFORMATION

Where the terms of an IFB are such that the bidder's signature on its bid is sufficient to commit it to meeting the minority business enterprise (MBE) requirements of the IFB, the signed bid is responsive, and a further requirement to submit information which concerns how that commitment would be met--which information could be supplemented after bid opening--relates to the bidder's responsibility.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--COMPETITIVE SYSTEM--COMPLIANCE

Where regulations promulgated by the grantor agency require grantees to assure the opportunity for free, open and competitive bidding when soliciting bids on

projects supported by federal funds, grantees must follow certain basic or fundamental principles of federal procurement law.

B-213823 Apr. 6, 1984 84-1 CPD 387

CONTRACTS--GRANT-FUNDED PROCUREMENTS--COURT ACTION--COMPLAINT, ETC. DISMISSED

Federal grant complaint is dismissed when the issue in the complaint is pending before a court of competent jurisdiction and the court has not expressed an interest in obtaining the views of GAO.

B-214635 Apr. 6, 1984 84-1 CPD 388

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO will not review contracting officer's nonresponsibility determination where it has been affirmed by the Small Business Administration's (SBA) denial of a certificate of competency (COC). In addition, GAO will not question the SBA's refusal to issue a COC absent a showing of fraud or bad faith.

B-214737 Apr. 6, 1984 84-1 CPD 389

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest that the type of solar film specified by the solicitation is not available and that the procuring officials refused to provide any sources of the specified film in a possible attempt to restrict competition to one firm that may have knowledge of an acceptable alternative product is untimely since the protest involves alleged improprieties apparent prior to bid opening, but was not filed before that date as required by GAO Bid Protest Procedures.

B-214737.2 Apr. 6, 1984 84-1 CPD 390

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that solicitation requirements are insufficiently clear is untimely since the protest involves alleged

improprieties apparent prior to bid opening, but was not filed before that date as required by GAO Bid Protest Procedures.

*B-214785 Apr. 6, 1984 84-1 CPD 391
ANTITRUST MATTERS--JURISDICTION--DEPARTMENT OF JUSTICE*

GAO does not consider allegations of predatory pricing in violation of the Robinson-Patman Act because that Act is not applicable to government contracts and violations of the anti-trust laws of the United States are within the jurisdiction of the Department of Justice.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest based on an allegation of an impropriety in a solicitation that was apparent prior to bid opening must be filed prior to bid opening in order to be considered on the merits.

*B-211036.2 Apr. 9, 1984 84-1 CPD 392
CONTRACTS--OPTIONS--EXERCISABLE AT SOLE DISCRETION OF GOVERNMENT--REVIEW BY GAO*

Where record shows that option is exercisable at sole discretion of government, GAO, under Bid Protest Procedures, will not consider incumbent contractor's contention that agency should have exercised its contract option.

CONTRACTS--PROTESTS--NOTICE--TO INTERESTED PARTIES--AWARDEE--FAILURE TO GIVE NOTICE EFFECT

Contracting agency's failure to notify awardee of protest does not confer substantive rights on awardee whose contract option was not exercised. The only remedy would have been rehearing of the protest with participation of the awardee, which is inappropriate with respect to nonexercise of an option.

*B-212775.3 Apr. 9, 1984 84-1 CPD 393
BIDS--PREPARATION--COSTS--RECOVERY*

An unsuccessful bidder is entitled to reimbursement for its bid preparation costs where the agency acted in an arbitrary and capricious manner with respect to the claimant's bid, and the bidder otherwise would have been awarded the contract.

CONTRACTS--PROFITS--ANTICIPATED

An unsuccessful bidder is not entitled to anticipated profits even if the firm should have been awarded the contract.

*B-212820 Apr. 9, 1984 84-1 CPD 394
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
METHOD--NOT PREJUDICIAL*

Assertion that incumbent was improperly permitted to benefit from labor agreement reducing wages below wages specified in wage determination is denied because agency used correct labor cost in evaluating the proposal and protester was not prejudiced.

Use of government prepared alternative incentive fee plan furnished only to incumbent did not improperly benefit that firm where plan played no part in the selection of the incumbent for award.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
POINT RATING--SIGNIFICANCE OF DIFFERENCES*

Use of scoring technique which assigned scores in five point increments on a scale of 1,000 possible points is not objectionable since scoring is used only as a guide to decision making and is not controlling determining award.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
SUBCONTRACTING PLAN*

Contention that awardee should not have been selected because it deemphasized the use of minority, disadvantaged and small business subcontractors is denied. Record

does not show that agency's evaluation and approval of sub-contracting plan was improper.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester bears the burden of affirmatively establishing its case. Bias and improper motives will not be attributed to contracting personnel based merely on inference or supposition.

CONTRACTS-- PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DEBRIEFING CONFERENCES--ISSUES PROVIDING PROTEST BASIS

To the extent protester first raises a basis of protest in response to the agency's report, but learned of the basis of protest at its debriefing several months earlier, the protest is untimely. To be timely, protest must be filed within 10 working days after the basis of protest is known or should have been known.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest based on alleged improprieties in a Request for Proposals filed after the closing date for receipt of proposals is untimely.

B-212829.3 Apr. 9, 1984 84-1 CPD 395

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision is affirmed because protester has failed to demonstrate that decision was based upon erroneous interpretation of fact or law or information not previously considered.

B-213417 Apr. 9, 1984 84-1 CPD 396

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--SITUATIONS NOT REQUIRING DISCUSSIONS

Although in a negotiated procurement discussions generally are required to be conducted with offerors in a competitive

range, award may be made on the basis of initial proposals where adequate price competition exists and the solicitation advised offerors that award might be made without discussions.

B-213417 Apr. 9, 1984 84-1 CPD 396

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--ADMINISTRATION DISCRETION

In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of evaluation boards, which have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--ALLEGATION OF BIAS NOT SUSTAINED

GAO will not attribute bias to an evaluation board simply on the basis of inference or supposition.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--COMPETITIVE RANGE EXCLUSION--REASONABLENESS

Proposals that are to be included within a competitive range generally are those which are either technically acceptable or reasonably susceptible of being made acceptable through discussions, that is, those proposals that have a reasonable chance of award.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

Although GAO generally will entertain protests of OMB Circular A-76 cost comparisons after administrative remedies have been exhausted, GAO will not consider such a protest by a party clearly not "interested" in the cost comparison's result, for example, a protester that cannot demonstrate that under any circumstance it would be in line for award even if it were to prevail on the issue.

*B-213475.2 Apr. 9, 1984 84-1 CPD 397
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF COMMENTS ON AGENCY'S REPORT*

The fact that a protester's comments on an agency report were erroneously sent to the contracting agency rather than GAO does not merit reopening a case which was closed because the protester did not send a timely indication of its continued interest in the protest to GAO.

*B-213579 Apr. 9, 1984 84-1 CPD 398
BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
CERTIFICATION, REGISTRATION, ETC. OF PARTS, ETC.*

Bid introducing ambiguity concerning FCC registration of modem should not have been rejected as nonresponsive to IFB requiring registration. Since registration status is a matter of public record, agency could have readily determined that modem was registered, and bidder was obligated to furnish a registered modem.

*B-213999 Apr. 9, 1984 84-1 CPD 399
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest of failure of agency to apply negotiated procurement procedures to advertised procurement filed more than 10 days after protester learned that such procedures would not apply is dismissed as untimely.

*B-214408 Apr. 9, 1984 84-1 CPD 400
BONDS--BIDS--DEFICIENCIES--POWER OF ATTORNEY AUTHORITY*

An agency properly may reject a bid as nonresponsive based on the submission of an inadequate bid bond where, although the penal amount shown on the bond is sufficient, a power of attorney accompanying the bid bond indicates that the surety's attorney-in-fact who signed the bond has authority to bind the surety on bonds only up to a fraction of the amount required.

*B-212482.2 Apr. 10, 1984 84-1 CPD 401
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed where firm requesting re-consideration fails to specify any errors of law or fact that warrant decision's reversal.

*B-212882, B-212882.2 Apr. 10, 1984 84-1 CPD 402
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
COMPELLING REASONS ONLY*

Protest against post-bid-opening cancellation of IFB is denied where agency had a compelling reason to justify the cancellation.

*BIDS--PREPARATION--COSTS--NONCOMPENSABLE--INVITATION PROPERLY
CANCELED*

Request for bid preparation costs is denied where agency has not engaged in arbitrary or capricious conduct.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest against award to low bidder under resolicitation is rendered academic when resolicitation is canceled.

*B-212968 Apr. 10, 1984 84-1 CPD 403
PAYMENTS--QUANTUM MERUIT/VALEBANT BASIS--ABSENCE, ETC. OF
CONTRACT--GOVERNMENT ACCEPTANCE OF GOODS/SERVICES--BENEFIT
TO GOVERNMENT REQUIREMENT*

Payment for work authorized by a government official without contracting authority may be made on a quantum meruit/quantum valebat basis where the government received a benefit and the price charged was reasonable.

*B-213192.3 Apr. 10, 1984 84-1 CPD 404
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL
BUSINESS SET-ASIDES*

Large business protester is interested party under GAO Bid Protest Procedures to challenge award under total small business set-aside where issue raised relates to the eligibility requirement under which the protester was excluded from the procurement.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION--CONTROLLING
DATE FOR DETERMINATION*

Procuring agency properly rejected bid of concern, under total small business set-aside, which, prior to bid opening, had been found to be other than small and had been recertified as small business prior to bid opening, notwithstanding SBA's decision after bid opening to change the size standard applicable to the type of procurement involved.

*B-213423 Apr. 10, 1984 84-1 CPD 406
BIDS--RESPONSIVENESS--SAMPLE REQUIREMENT*

Where a solicitation for coin carrier boxes required samples to be submitted which conform to the specifications listed in the solicitation, the agency properly rejected as nonresponsive a bid which was accompanied by a sample that did not meet those specifications.

*B-213424 Apr. 10, 1984 84-1 CPD 407
REAL PROPERTY--SURPLUS GOVERNMENT PROPERTY--SALE--PRICE
SUFFICIENCY*

Agency properly canceled sale of real property and rejected all bids where highest bid was significantly below agency appraisal of fair market value of property, IFB reserved to government the right to reject all offers, and pertinent regulations authorize agency to cancel sale and resolicit in these circumstances. GAO examination of agency appraisal reveals no impropriety in evaluation methods used.

*B-213552.2 Apr. 10, 1984 84-1 CPD
CONTRACTS--OFFER AND ACCEPTANCE--OFFER--WHAT CONSTITUTES*

This Office views as a binding offer certification under solicitation clause for establishing that bidder is offering product from a designated country pursuant to the Trade Agreements Act of 1979, where provision is sole means of establishing whether product is from designated country.

*B-214658 Apr. 10, 1984 84-1 CPD 408
BONDS--BID--DEFICIENCIES--BID REJECTION*

Bid bond with penal sum of substantially less than the required 20 percent of bid price renders bid non-responsive because amount of guarantee was not equal to or greater than the difference between the price stated in the bid and the next higher acceptable bid, notwithstanding that deficiency may have resulted from an innocent error on the part of the surety. Deficiency may not be corrected to make a nonresponsive bid responsive and may not be waived.

*B-211992 Apr. 11, 1984 84-1 CPD 409
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

GAO finds a rational basis for the exclusion of the protester from competitive range in subcontract procurement because protester did not explain, as required, how its system functioned, but, instead, "parroted" specifications and provided blanket assurance that the protester's system would meet or exceed the minimum specification requirements.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--
AFTER EVALUATION OF INITIAL PROPOSALS--NOTICE TO OFFERORS
OUTSIDE COMPETITIVE RANGE*

Amendment need not be issued to offeror no longer in competitive range where change contained in amendment is not directly related to reasons for excluding offeror from competitive range.

B-211992 Apr. 11, 1984 84-1 CPD 409 - Con.
EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--GENERAL
SERVICES ADMINISTRATION--RESPONSIBILITIES UNDER BROOKS ACT--
DELEGATION OF PROCUREMENT AUTHORITY TO OTHER AGENCIES--
EXCEPTIONS

Where prime government contract requires total operation of facility, involving more than automatic data processing services or items, contractor is not required under FPR 1-4.1101(b)(2) to obtain Delegation of Procurement Authority from General Services Administration.

B-213140 Apr. 11, 1984 84-1 CPD 410
DEPARTMENTS AND ESTABLISHMENTS--LIQUIDATION--CLAIMS

GAO approves settlement of a claim by a contractor against a defunct federal agency.

B-214674 Apr. 11, 1984 84-1 CPD 411
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

A bid protest not received in our Office within 10 working days after the basis of the protest is known or should have been known is untimely under our Bid Protest Procedures, 4 C.F.R. 21.2(b)(2) (1983), and will not be considered.

B-214733 Apr. 11, 1984 84-1 CPD 412
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Where more than 3 weeks prior to bid opening date bidder requests that date be extended, is advised by contracting officer 3 days after request is made that it is denied, and then 1 month later-a week after bids have been opened-bidder files protest with GAO, protest is dismissed as untimely. If request made to contracting officer is considered initial protest, subsequent protest to GAO was not filed within 10 working days of adverse agency action. If initial protest is that to GAO, it is untimely, having been filed after bid opening.

B-214733 Apr. 11, 1984 84-1 CPD 412 - Con.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that an IFB contains an unduly restrictive geographical limitation and that it should be set aside for small business is untimely when not filed prior to bid opening.

B-214310 Apr. 12, 1984 84-1 CPD 413

CONTRACTS--PROTESTS--ALLEGATIONS--PREMATURE

Contention that future solicitations may contain unduly restrictive requirements is dismissed as premature.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest of a solicitation's bid guarantee and performance bond requirements is dismissed as academic because the solicitation has been canceled.

B-214582 Apr. 12, 1984 84-1 CPD 414

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--FAILURE TO
SOLICIT*

Protest alleging that the General Services Administration failed to furnish a copy of a Federal Supply Schedule solicitation to the protester is denied summarily where the protester has neither alleged nor shown that the agency intended to exclude the protester from submitting a proposal.

B-214614 Apr. 12, 1984 84-1 CPD 415

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY*

GAO will not question the Small Business Administration's refusal to issue a certificate of competency (COC) or require a reopening of a case where a COC has been denied in the absence of a showing of fraud or bad faith.

*B-214861 Apr. 12, 1984 84-1 CPD 416
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Propriety of agency's decision to hold contractor responsible for reprinting books misdelivered to the wrong location involves a matter of contract administration which is the responsibility of procuring agency rather than GAO under its Bid Protest Procedures.

*B-214777 Apr. 13, 1984 84-1 CPD 417
CONTRACTS--PROTESTS--COURT ACTION--PROTEST DISMISSED*

Protest is dismissed where the material issues are before a court of competent jurisdiction, judicial relief pending a decision by this Office has not been requested, and the court has not expressed interest in receiving GAO's views.

*B-213846.3 Apr. 16, 1984 84-1 CPD 418
CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--
MINIMUM WAGE, ETC. DETERMINATIONS*

Wage determinations providing for fringe benefits issued pursuant to the Service Contract Act adequately detail the pay formulas for fringe benefits.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--
SERVICE CONTRACT ACT OF 1965*

Responsibility for administration and enforcement of the Service Contract Act is vested in the Department of Labor, not with GAO, and whether contract requirements are met is a matter of contract administration which is the function of the contracting agency.

*B-214095 Apr. 16, 1984 84-1 CPD 419
BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED*

Contracting agency properly rejected as nonresponsive bid for the supply of coal where pursuant to evaluation scheme set forth in IFB it examined government coal

analysis report pertaining to same mine and seam proposed for use by bidder, and same tippie at which coal was processed to exact size being procured, and report shows coal was below specification.

*B-214721 Apr. 16, 1984 84-1 CPD 420
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest, alleging a defect in a request for proposals, which was not received until after the closing date for receipt of proposals is untimely under Bid Protest Procedures and will not be considered.

*B-214840 Apr. 16, 1984 84-1 CPD 421
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS*

Protest is premature where it does not concern immediate procurement but instead challenges restrictiveness of possible future solicitations.

*B-210800 Apr. 17, 1984 84-1 CPD 422
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not question an affirmative responsibility determination absent a showing of fraud or bad faith by government officials or a demonstration that the offeror failed to meet definitive responsibility criteria.

*CONTRACTS--AWARDS--RETIRED GOVERNMENT EMPLOYEES--RIGHT TO
COMPETE FOR AWARD*

Illegal conflict of interest is not proven where protester has merely alleged facts (former contracting agency employee now works for awardee) that at most establish a potential for improprieties.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--COST REALISM--
REASONABLENESS*

Agency determinations resulting from a cost comparison analysis will not be disturbed unless they clearly lack a reasonable basis.

B-210800 Apr. 17, 1984 84-1 CPD 422 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--COST REALISM--
REASONABLENESS

Agency determinations resulting from a cost comparison analysis will not be disturbed unless they clearly lack a reasonable basis.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

GAO will question a determination concerning the technical merit of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Protester has failed to make such a showing with respect to NASA's determination that the two proposals submitted are technically equal.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Allegation that an agency has entered an illegal personal services contract is without merit where RFP and selected proposal clearly indicate that the contractor, not the government, will exercise supervisory authority over the contractor's employees.

CRIMINAL LAW VIOLATIONS--NOT FOR GAO CONSIDERATION

Allegation that offeror violated 18 U.S.C. 1001 (1982) by misrepresenting its past performance and its success in obtaining commitments of employees does not appear to be supported by the record, and in any event is a matter for consideration by the Department of Justice, not GAO.

B-210911, et al. Apr. 17, 1984 84-1 CPD 423
BIDS--EVALUATION--TECHNICAL ADEQUACY--ADMINISTRATIVE
DETERMINATION

Judgment of the technicians and specialists of the procuring agency as to the technical adequacy of the bids will be questioned by our Office only if there is

a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations.

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION*

Failure of a solicitation to specify or adequately describe all required features of a brand name product in a brand name or equal solicitation, resulting in bids which, unknown to the bidder, were not acceptable to the agency provides a cogent and compelling reason to cancel the solicitation after opening.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--SALIENT CHARACTERISTICS--CONFORMABILITY REQUIREMENT*

In "brand name or equal" procurement, "equal" item need not meet unique features of brand name product so long as salient characteristics listed in IFB are met.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Protest that requirement for nickel-plated brass casings on ammunition unduly restricts competition is denied where protester has not shown that the contracting agency's belief that such casings are necessary for accurate firing of ammunition is unreasonable.

CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD

Failure of contracting officer to comply with regulatory requirements in awarding a contract notwithstanding the pendency of the protest a procedural defect which does not affect the validity of an otherwise valid award.

B-211119.5 Apr. 17, 1984 84-1 CPD 424

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHI*

Request for reconsideration of decision is denied where protester does not show any error of law or fact in the decision that warrants reversal.

*B-212191.2 Apr. 17, 1984 84-1 CPD 425
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON*

Prior decision is modified to permit a cost comparison that avoids an erroneous comparison. Overhead costs that are not eliminated when the operation is contracted out are not required to be charged to the in-house operation. Modifies B-212191, Nov. 17, 1983.

*B-212539 Apr. 17, 1984 84-1 CPD 426
CONTRACTS--GRANT-FUNDED PROCUREMENTS--MINORITY BUSINESS
ENTERPRISE GOAL--AWARD PREFERENCE--FAILURE TO QUALIFY AT BID
OPENING--SUBSEQUENT QUALIFICATION NOT PERMITTED*

Where a grantee's solicitation imposes a minority business enterprise (MBE) subcontracting goal on bidders and requires with the bid either a commitment statement or an explanation as to why the goal cannot be met, a bidder's failure to comply with the requirement renders the bid nonresponsive in circumstance where the bidder would not otherwise be committed to the goal or other MBE requirements.

*B-212661 Apr. 17, 1984 84-1 CPD 427
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONDISCLOSED DOCUMENTS--GAO EXAMINATION*

GAO will examine documents pertaining to a bidder's responsibility that were not disclosed to the bidder to determine if the grantee's determination of nonresponsibility was reasonable.

*CONTRACTS--GRANT-FUNDED PROCUREMENTS--COMPETITIVE SYSTEM--
COMPLIANCE*

When competitive bidding is a condition to a local housing authority's receipt of federal funds, the authority must follow certain basic principles of federal procurement law and may award the contract only to the low, responsible bidder.

B-212661 Apr. 17, 1984 84-1 CPD 427 - Con.
CONTRACTS--GRANT-FUNDED PROCUREMENTS--CONTRACTORS--
RESPONSIBILITY DETERMINATION

GAO will not disturb a grantee's determination of nonresponsibility unless it lacks a reasonable basis.

B-213255 Apr. 17, 1984 84-1 CPD 428
BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION
THAT ITEM OFFERED FAILED TO MEET SPECIFICATIONS

A contracting agency may require bidders to provide descriptive literature for use in bid evaluation, so that the agency can determine exactly what a bidder proposes to furnish. Where the literature does not clearly show conformance with the specifications, rejection of the bid is required, even if the offered product in fact possesses the required characteristics.

BIDS--RESPONSIVENESS--OFFER OF COMPLIANCE AFTER BID OPENING--
ACCEPTANCE NOT AUTHORIZED

Bid for telephone system which is nonresponsive because it fails to offer a required feature may not be accepted in the expectation that after award, the contractor may be compelled to supply the missing feature under the contract clause providing for the remedying of defects in workmanship and materials.

BIDS--RESPONSIVENESS--RESPONSIVENESS V. BIDDER RESPONSIBILITY-
DESCRIPTIVE LITERATURE REQUIREMENT

A specification requirement that bidders offer a telephone system with the present capability of adding station message detail recording at a later date goes to whether a bidder is offering a system currently conforming to the specifications rather than to whether the bidder had the apparent ability and capability to subsequently modify the system, and thus a requirement that descriptive literature be furnished that shows compliance with the specification goes to the responsiveness of the bid rather than to the responsibility of the bidder.

*B-213363 Apr. 17, 1984 84-1 CPD 429
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--ADMINISTRATIVE
DETERMINATION*

Under applicable regulations, the question of whether a prospective contractor qualifies as a manufacturer or regular dealer for Walsh-Healey Public Contracts Act purposes is for the contracting officer, with appeal to the Department of Labor or, in appropriate circumstances, the Small Business Administration and, thus, will not be considered by GAO.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility except in limited circumstances not present here. Fact that firm is in bankruptcy proceedings does not necessitate a finding of nonresponsibility.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
WITHDRAWAL--PRICES EXCESSIVE*

Protest against the contracting officer's decision to withdraw a small business set-aside because of unreasonable prices is denied in the absence of a showing of bad faith or fraud. Based on other substantially lower prices received, even though from large business concerns, we do not find contracting officer's decision unreasonable.

*B-213396 Apr. 17, 1984 84-1 CPD 430
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ALLEGATION OF BIAS NOT SUSTAINED*

Unsubstantiated allegations of bad faith on the part of agency procurement personnel do not meet the judicially established standard of "well nigh irrefragable proof."

B-213396 Apr. 17, 1984 84-1 CPD 430 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY V. RESPONSIBILITY DETERMINATION

An offeror's financial condition primarily is to be considered as a matter of responsibility and may not be comparatively evaluated under technical criteria unless the procuring agency demonstrates that special circumstances justify a comparative evaluation.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMBIGUOUS

Solicitation was ambiguous and offerors did not compete on an equal basis where protester proposed in accordance with reasonable specification requirement yet awardee was permitted to propose on a different basis.

B-213453 Apr. 17, 1984 84-1 CPD 431
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--
NOTIFICATION OF UNSUCCESSFUL OFFERORS

Where small business set-aside is conducted as negotiated procurement for personal or professional services pursuant to 10 U.S.C. 2304(a)(4), procuring activity is not required to provide unsuccessful offerors with notice of intent to award prior to actual awarding of contract.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS

Protest concerning small business size status is not for consideration by GAO since exclusive authority over such matters is statutorily vested with the Small Business Administration.

B-213555 Apr. 17, 1984 84-1 CPD 432
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
CORRECTIVE ACTION PROPOSED, TAKEN, ETC. BY AGENCY

Protest from nonresponsive bidder that all other bids were nonresponsive is rendered academic by agency cancellation of solicitation on grounds that no responsive bids from responsible bidders were received.

B-213555 Apr. 17, 1984 84-1 CPD 432 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF
COMPETENCY REQUIREMENT

GAO will not review agency's rejection of the low bidder, a small business concern, as nonresponsible where the bidder refused to file an application with the Small Business Administration (SBA) for a certificate of competency (COC). A small business found nonresponsible does not have the option of seeking review of that determination by filing a protest with GAO, but must instead seek a COC for SBA.

B-213591 Apr. 17, 1984 84-1 CPD 433
BIDS--RESPONSIVENESS--SAMPLE REQUIREMENT

A bid not accompanied by required bid samples was properly rejected as nonresponsive, despite the presence of a waiver of bid sample clause, where the contracting officer could not conclude that the offeror's previously accepted product met the current IFB's requirements so that waiver would be appropriate.

B-213892 Apr. 17, 1984 84-1 CPD 434
CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--SPECIFICATIONS--
DEVIATIONS--EFFECT

Although a step-one technical proposal deviated from a solicitation requirement materially related to the agency needs, the deviation had only a de minimis effect upon the procurement where the offeror was able to bring its product into conformity by the simple substitution of a slightly more expensive component, and the substitution itself had only a trivial price impact upon the relative standing of the step-two bids.

B-214041 Apr. 17, 1984 84-1 CPD 435
BIDS--LATE--REGISTERED MAIL--"FIVE-DAY RULE"

Although bidder was not specifically informed of recent change in Forest Service policy, late bid sent by certified mail 3 days before bid opening was properly rejected under late bid provision which requires certified mail to be sent not later than 5 days before bid opening.

B-214121 Apr. 17, 1984 84-1 CPD 436
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
DELIVERY PROVISIONS

Where bidder includes condition that has the effect of extending the promised delivery date beyond the date required by the solicitation, the bid is nonresponsive and must be rejected.

B-214427.2 Apr. 17, 1984 84-1 CPD 437
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest concerning the rejection of a bid as unreasonably low filed with GAO more than 10 working days after the protester received written notice from the agency of the basis for rejection of its bid is untimely and not for consideration on the merits. For protests filed with GAO, the term "filed" means receipt in GAO.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION

GAO will not consider an untimely protest under the exception to GAO's timeliness rules for significant issues where the protest does not raise issues of widespread interest or importance to the procurement community which have not been considered on the merits in previous decisions.

B-214799 Apr. 17, 1984 84-1 CPD 438
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest not filed within 10 working days after protester learns the basis for its protest is dismissed as untimely.

B-211790 Apr. 18, 1984 84-1 CPD 439
CONTRACTS--NEGOTIATION--AWARDS--BASIS--EFFECT OF PRIOR AWARDS

The fact that the agency found the protester's proposal technically acceptable under a similar prior procurement does not establish that it unreasonably failed to do

so in a subsequent one. The propriety of an award in a negotiated procurement depends on the facts and circumstances of the particular procurement.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--EVALUATORS--BIAS ALLEGED

GAO will not find an evaluation biased if the record provides a reasonable basis for it since the critical issue is not the motivation of the evaluators but whether all offerors were treated fairly and equally.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--EVALUATORS--SELECTION

The selection of an evaluator is primarily a matter within the procuring activity's discretion, which GAO generally will not question absent evidence of bias.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--INFORMATION SUFFICIENCY

Proposals basically must be evaluated on the basis of information furnished with them; no matter how capable an offeror may be, it cannot expect to be considered in the competitive range if it does not submit an adequately written proposal.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--TECHNICAL ACCEPTABILITY

Contracting agency reasonably evaluated protester's proposal for developing a laser arm/fire device as technically unacceptable where the proposal failed to include detailed information establishing the feasibility and desirability of its proposed approach as required by the solicitation, and where the proposal was significantly deficient in detail as compared to the proposals included in the competitive range.

*B-212385.3 Apr. 18, 1984 84-1 CPD 440
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Request for reconsideration is denied as to issues on which protester has not specified any errors of law or information not previously considered in the initial protest.

Previous decision is affirmed where protester has not met its burden of proving that prior decision contained error of fact or law.

*B-212847.2 Apr. 18, 1984 84-1 CPD 441
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Where protester argues that GAO decision first raised an issue that was not argued by the parties but record shows that in fact the protester raised the issue during the course of its protest, reconsideration of the protest without regard to that issue is not required.

GAO reaffirms prior decision where reconsideration request merely reflects protester's disagreement with decision and does not provide any evidence that the decision was erroneous.

*B-213452.2 Apr. 18, 1984 84-1 CPD 442
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Where basis for request for reconsideration is merely an argument that was considered and rejected in original decision, original decision is affirmed.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest filed later than 10 working days after the basis for the protest was known by the protester is untimely and not for consideration.

*B-213495 Apr. 18, 1984 84-1 CPD 443
BIDS--MISTAKES--CORRECTION--AUTHORITY*

Authority to correct mistakes alleged after bid opening but before award is vested in procuring agencies, and the weight to be given the evidence in support of an asserted mistake is a question of fact. GAO therefore will not disturb an agency's determination concerning correction unless there is no reasonable basis for it.

*BIDS--MISTAKES--UNIT PRICE V. EXTENSION DIFFERENCES--
ADMINISTRATIVE CORRECTION*

Agency reasonably may rely upon a solicitation clause providing that the unit price will govern in case of a discrepancy between the unit and the extended prices where the bid would be low whether either price were used and it is not clear that it is the unit, rather than the extended, price that is incorrect.

*B-214572 Apr. 18, 1984 84-1 CPD 444
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

GAO will not review an agency's rejection of a bidder, a small business concern, as nonresponsible where the bidder did not file an application with the Small Business Administration (SBA) for a certificate of competency (COC), since by law SBA has conclusive authority to determine the issue and GAO review would amount to a substitution of this Office for the agency authorized by statute to make that review.

*B-214850 Apr. 18, 1984 84-1 CPD 445
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

Protest complaining that bids lower than the protester's were below cost is dismissed since a bid may not be rejected merely because it is too low and the protester has not alleged either fraud or bad faith, or the misapplication of definitive responsibility criteria, in connection with the contracting officer's determination that one of the bidders was responsible.

B-214891 Apr. 18, 1984 84-1 CPD 446
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest of rejection of bid as nonresponsive is untimely when filed with GAO more than 10 working days after protester learned of protest basis.

B-209543.2 Apr. 19, 1984 84-1 CPD 447
BIDS--INVITATION FOR BIDS--CANCELLATION--NOT REQUIRED,
WARRANTED, ETC.

Refusal on grounds of administrative convenience to recalculate estimate of in-house costs for operating base maintenance facilities (which failed to account for an IFB amendment) does not constitute a cogent or compelling reason for reprocurring the requirement, but rather constitutes a breach of the government's obligation to evaluate the bid fairly and honestly.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATIONS--REPROCUREMENT, ETC.

GAO will review a protest against a termination for convenience where the termination is based on an alleged deficiency in the initial contract award.

B-211907 Apr. 19, 1984 84-1 CPD 448
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protest asserting that agency should restrict competition to approved sources listed on drawing referenced in the solicitation is inappropriate for review under GAO bid protest function, since it conflicts with objective of that function, specifically, to insure attainment of full and free competition.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or

bad faith by procurement officials or misapplication of definitive responsibility criteria, circumstances not present here.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Protest that the awardee will not deliver domestic end products in performing its contracts concerns a matter of contract administration for the contracting agency and will not be reviewed by GAO.

*B-213574 Apr. 19, 1984 84-1 CPD 449
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--ADEQUACY*

Protest that agency's refusal to permit weekend site visit to observe mess attendant services precludes intelligent bidding for weekend services is without merit where solicitation contains information sufficient to prepare bids for weekend services.

*CONTRACTS--COMPETITIVE SYSTEM--COMPETITIVE ADVANTAGE--NOT
RESULTING FROM UNFAIR GOVERNMENT ACTION*

Government is not required to equalize competitive advantage of past contractor where such advantage does not result from preference or unfair action by government.

*B-213995 Apr. 19, 1984 84-1 CPD 450
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Protest of contracting agency decision to exclude satellite telecommunications common carriers from procurement of telecommunications services, thereby limiting competition to terrestrial carriers, is denied where contracting agency establishes prima facie case that the exclusion is legitimately related to its minimum needs and protester, although questioning agency's technical judgment, fails to clearly show that agency decision to restrict competition is unreasonable.

CONTRACTS--NEGOTIATION--AWARDS--PREJUDICE ALLEGED--WITHOUT MERIT

Protest is without merit in absence of evidence that contracting agency provided improper assistance to awardee to the detriment of the protester.

CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--OFFEROR'S SUPERIOR ADVANTAGES--GOVERNMENT EQUALIZING DIFFERENCES

Certain offerors may enjoy a competitive advantage as a result of other federal, state or local programs. However, there is no requirement that the government equalize the competitive position of all potential offerors unless the advantage is the result of preference or unfair action by the government.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--VARYING DEGREES OF DISCUSSION--PROPRIETY

Protester was not prejudiced by agency officials' holding of discussions with offeror at offeror's place of operation. Record indicates that discussions were held at vendor's site for convenience of contracting officials and not for purpose of conducting site inspections. Also, discussions concerned offeror's price and did not involve issues regarding vendor's site or operation.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--REASONABLE BASIS--CHANGED CONDITIONS, NEEDS, ETC.

Agency decision to cancel initial solicitation because price was determined unreasonable without negotiations concerning price is not objectionable where price submitted by sole offeror was three times that of government estimate, 2-½ times the current contractor's price, offeror could serve only one court of 15 courts requiring the service at that price, and price competition was lacking.

*B-213941 Apr. 20, 1984 84-1 CPD 451 - Con.
LICENSES--STATE AND MUNICIPALITIES--GOVERNMENT CONTRACTORS*

Where solicitation is issued on unrestricted basis, local government entity may compete with commercial concerns for government contract.

*B-208418.2, B-213046.2 Apr. 23, 1984 84-1 CPD 453
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--
MANDATES OF REGULATION GOVERNING AMENDMENTS*

Agency failure to comply with Defense Acquisition Regulation 3-805.4(b) (Defense Acquisition Circular No. 76-17, September 1, 1978), which provides that, where the competitive range has been established, only those offerors within the competitive range, as opposed to all firms solicited, should be sent an amendment to the solicitation, is a mere procedural violation that does not prejudice any offerors. In fact, the record indicates that the agency considered only the proposals submitted in response to the amendment of those offerors already determined to be in the competitive range.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

Request for reconsideration is untimely where it is not filed within 10 working days after the protester knew or should have known the basis for reconsideration.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest allegation that the solicitation specifications favor two particular offerors is untimely where the allegation is filed with GAO after the due date for submission of initial proposals. Where a protest incorporates multiple bases, each individual basis of protest must independently satisfy the timeliness standards established in our Bid Protest Procedures.

*B-211904.2 Apr. 23, 1984 84-1 CPD 454
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION--COST/TECHNICAL TRADEOFFS*

In a negotiated procurement, award need not be based on low cost; rather, cost/technical trade-offs may be made as long as the award determination is reasonable in light of the solicitation's evaluation scheme.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW*

Where a protester challenges a contracting agency's evaluation of technical proposals in a negotiated procurement, it is not the function of GAO to reevaluate proposals but rather to determine if there is a reasonable basis for the agency's technical evaluation.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

A protester fails to prove that the proposal evaluation process was biased or that technical evaluations were unreasonable where no independent evidence of bias is provided and the record reasonably supports the contracting agency's technical judgment.

*B-213068 Apr. 23, 1984 84-1 CPD 455
BIDS--INVITATION FOR BIDS--CANCELLATION--JUSTIFICATION--
MINIMUM NEEDS REASSESSMENT*

Determination to cancel invitation prior to bid opening is a matter of contracting agency discretion which will not be disturbed by GAO absent clear proof of abuse of discretion. Where cancellation was based on substantial changes in requirements which occurred after issuance of invitation, there was no abuse of discretion.

*B-213197 Apr. 23, 1984 84-1 CPD 456
BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY
UNBALANCED BIDS"--WHAT CONSTITUTES*

Protest that awardee submitted unbalanced bids under two different invitations and, therefore, should not have been awarded either contract is denied. Record does

not show that bids were based upon nominal prices for some line items and enhanced prices for others and, therefore, we conclude that bids are not mathematically unbalanced.

*B-213595 Apr. 23, 1984 84-1 CPD 457
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
MATERIALITY DETERMINATION*

Rejection of protester's low bid for failure to acknowledge an amendment which corrected square footage measurement for base facility offices was improper where solicitation obligated protester to provide custodial services for those offices regardless of footage and protester's bid for amended solicitation is still low.

*B-214234 Apr. 23, 1984 84-1 CPD 459
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--PRIOR GAO
CONSIDERATION OF SAME ISSUE EFFECT*

Protest does not fall under the significant issue exception of timeliness rules, since it is not a matter of widespread interest to the procurement community and has been the subject of previous GAO decisions.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against failure of contracting agency to solicit protester for procurement is untimely, since solicitation was advertised in the Commerce Business Daily and protest was filed more than 3 months after the closing date for receipt of proposals.

*B-214734 Apr. 23, 1984 84-1 CPD 460
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
STATUS OF BIDDERS*

Procuring agency properly rejected offer of concern which was not a small business under applicable size standard when it submitted its certification of size status,

notwithstanding SBA's post-certification change in the size standard applicable to the type of procurement involved.

*B-214865 Apr. 23, 1984 84-1 CPD 461
BIDS--LATE--REGISTERED MAIL--"FIVE-DAY RULE"*

Mailed bid received late may be considered only if it was sent by certified or registered mail at least 5 days before bid opening or, if sent by ordinary mail, where the sole reason for the late arrival was mishandling by the government after receipt.

*B-214928 Apr. 23, 1984 84-1 CPD 462
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
BID SIGNATURE*

Rejection of bid as nonresponsive is proper when bid is unsigned and not accompanied by other material indicating bidder's intention to be bound.

*B-210756.2 Apr. 24, 1984 84-1 CPD 463
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
TECHNICAL CHANGES, ETC. NOT PRECLUDED*

An erroneous transcription of an offeror's prices in the abstract of proposals provides no basis to challenge an award.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

In judging proposals, a contracting agency may not consider evaluation factors which were not included in the solicitation's evaluation criteria.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TRANSPORTATION COSTS*

GAO will not question the contracting officer's use of carrier shipping rates provided by government transportation experts for purposes of evaluating transportation costs associated with a supply contract, unless it is shown that the contracting officer acted in bad faith.

*B-210756.2 Apr. 24, 1984 84-1 CPD 463 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Post-award protest that the agency should have included certain clauses regarding the evaluation of transportation costs in the solicitation is untimely since alleged improprieties apparent prior to the closing date for submission of proposals must be filed before that date.

*B-211048 Apr. 24, 1984 84-1 CPD 464
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review allegations of awardee's lack of financial capability absent showing of fraud or bad faith by contracting agency.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS*

Agency properly reopened negotiations and later closed them with second round of best and final offers after receiving protest alleging that offeror in the competitive range was not in compliance with mandatory RFP requirement.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE INCLUSION--REASONABLENESS*

Where RFP required offerors to demonstrate the current availability of equipment being used in system, offeror who demonstrates current availability of individual pieces of equipment, but does not simultaneously demonstrate availability of entire system, has met the requirement and is properly within the competitive range.

Offeror's insertion of clause indicating that certain information in proposal is subject to change is permissible where the contracting agency requested the information for informational purposes and not for purpose of ascertaining offeror's compliance with mandatory solicitation provisions.

B-211048 Apr. 24, 1984 84-1 CPD 464 - Con.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--RESPONSIVENESS--
CONCEPT NOT APPLICABLE TO NEGOTIATED PROCUREMENTS--EXCEPTION*

Although RFP provision warns that offers failing to meet mandatory requirements of RFP will be considered nonresponsive, such provision does not authorize automatic rejection of offer which is reasonable susceptible of being made acceptable through discussions.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Allegation that awardee's equipment failed to meet mandatory RFP accuracy requirement is speculative where agency denies allegation and there is no evidence affirmatively establishing protester's position.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Where protest is initially timely filed and subsequently supplemented, within 10 working days of protester's receipt of information under the Freedom of Information Act, the protest as supplemented is timely.

B-211406 Apr. 24, 1984 84-1 CPD 465

*CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--COMPETITION
AVAILABILITY*

GAO questions sole-source Army contract where Army was on notice of protester's claim of sufficient production capability to compete for contract nearly 7 weeks before Army began sole-source negotiations, but Army did not investigate protester's claim.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL
CONTRACTORS, ETC. NOT SUBMITTING BIDS, ETC.*

Army argues that protester, allegedly a large business, is not interested party to challenge sole-source contract under GAO's Bid Protest Procedures because protester would have been ineligible to compete

under small business set-aside which allegedly would have been made. GAO rejects Army's argument as speculative since there does not appear to have been at least two responsible small business concerns capable of meeting the government's delivery schedule so as to justify a set-aside.

*B-212395.2, et al. Apr. 24, 1984 84-1 CPD 466
BIDS--EVALUATION--ON BASIS OTHER THAN IN INVITATION--PROPRIETY*

Where protester's undisputedly offered product conforming to solicitation item description, but agency decides to evaluate offers on the basis of features not stated in the item description, the agency must inform offerors of the change and permit them an opportunity to revise their proposals.

BIDS--INVITATION FOR BIDS--AMENDMENTS--LATE RECEIPT--BIDDER'S RISK

Bidders complaint that it only received an amendment 3 days before bid opening and therefore did not have adequate time to consider it in preparing the bid does not affect the validity of the award. The agency issued the amendment in sufficient time to permit bidders to consider it in bid preparation, and the propriety of the procurement therefore depends on whether the government obtained adequate competition and reasonable prices, not on whether some prospective bidders in fact failed to receive the amendment in time to consider it.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--LIFE CYCLE COST

Contention that life-cycle cost (LCC) testing methodology and application incorporated into solicitation is defective is denied where protester has not shown that agency methodology and application were unreasonable or prejudiced protester.

B-212395.2, et al. Apr. 24, 1984 84-1 CPD 466 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against solicitation impropriety which was not filed prior to bid opening either with the agency or GAO is untimely filed under GAO Bid Protest Procedures, 4 C.F.R. 21.2(b)(1) (1983).

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT INTEREST CRITERIA

Where protester seeks correction of defects in testing methodology and application which protester alleges materially affected bid price evaluation under solicitation and requests termination of contract and resolicitation of requirement, protester is a sufficiently interested party to assert protest under our Bid Protest Procedures.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--NONRESPONSIVE BIDDER

Protest against alleged improprieties in solicitation is dismissed where protester would not be eligible for award because its product is nonresponsive to the solicitation even if the issues raised were resolved in its favor.

CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

Letter stating grounds of protest and intent to file protest with the General Accounting Office if agency fails to take corrective agency action constitutes protest to agency, and protest filed with GAO within 10 working days of initial adverse agency action is timely.

B-212425, et al. Apr. 24, 1984 84-1 CPD 467
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS-
MINIMUM NEEDS--NOT OVERSTATED

Requirement for prior certification that equipment be compatible with critical Department of Defense communications network and satisfy security requirements, where

applicable, is reasonable restriction on competition. GAO recommends that protester's equipment be considered for certification testing.

*B-213145, B-213145.2 Apr. 24, 1984 84-1 CPD 468
BIDS--LATE--INVITATION MAILING REQUIREMENTS--NONCOMPLIANCE*

Bid may not be considered for award under IFB late bid provisions where (1) bid was not sent by registered or certified mail and (2) the procuring agency's time-date stamp shows that the bid was received at the agency's installation after bid opening.

BIDS--LATE--MISHANDLING DETERMINATION--BIDS RECEIVED AT ONE PLACE FOR DELIVERY TO ANOTHER PLACE

Bid may not be considered under exception permitting acceptance of late bids where sole or paramount cause of lateness was government mishandling in the process of receiving the bid since bidder contributed to lateness of bid by failing to indicate on envelope that envelope contained a bid.

*B-213257.2, B-213257.3 Apr. 24, 1984 84-1 CPD 469
BIDS--LATE--ACCEPTANCE--DELAY DUE TO IMPROPER GOVERNMENT ACTION*

Commercial carrier delivered bid to address designated in invitation for mailed bids. Bid was delivered by contracting agency to address designated for hand-carried bids as well as for receipt of bids, where it arrived prior to bid opening time. However, the bid was not delivered to the bid opening room. The bid was not discovered until after bid opening. Since the bid was received at address designated for receipt of bids prior to bid opening, the bid was properly for consideration.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protester's allegation that awardee does not have the requisite experience to perform contract concerns a matter of responsibility. GAO does not review affirmative determination of responsibility unless either fraud

on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Neither exception has been alleged.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where the only evidence of timely submission of a bid is a statement by agency employee that he saw bid package in office designated as address for receipt of bids and protesters offer no evidence to refute statement, protesters have not met burden of affirmatively proving their cases.

B-213313 Apr. 24, 1984 84-1 CPD 470

BONDS--BID--SURETY--UNACCEPTABLE--NONDISCLOSURE OF OTHER BOND OBLIGATIONS

Allegation that finding of surety unacceptability was made in bad faith is without merit where record discloses reasonable basis for agency determination that individual surety did not possess sufficient assets.

B-213401 Apr. 24, 1984 84-1 CPD 471

BIDS--AMBIGUOUS--TWO POSSIBLE INTERPRETATIONS--CLARIFICATION PREJUDICIAL TO OTHER BIDDERS--REJECTION OF BID

Where a bid is reasonably subject to more than one interpretation, only one of which makes the bid low, the bid should be rejected as ambiguous since other bidders would be prejudiced if the bid were accepted.

B-213691 Apr. 24, 1984 84-1 CPD 472

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest challenging capability of awardee to perform relates to matter of responsibility which will not be reviewed absent a showing that contracting agency acted fraudulently or in bad faith.

*B-213691 Apr. 24, 1984 84-1 CPD 472 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PRICE CONSIDERATION*

Allegation that agency improperly evaluated price proposals will not be considered where reevaluation indicates that protester's price still exceeds awardee's price by significant margin since protester was not prejudiced by any error.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

Protest of technical evaluation of proposals is denied where protester has not shown evaluation to be unreasonable.

*B-214169 Apr. 24, 1984 84-1 CPD 474
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED*

Where IFB identifies previously approved source controlled components and requires bidder to certify that it will furnish only those components, bidder's failure to certify is a material deviation and requires rejection of its bid as nonresponsive.

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR
ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.*

Post-opening procurement actions by contracting agency does not estop the agency from rejecting a nonresponsive bid when required to do so by law.

*B-214908 Apr. 24, 1984 84-1 CPD 475
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO generally will not review affirmative determination of responsibility.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION
BY GAO*

GAO will not review matter of contract administration.

B-210818.3, B-212173 Apr. 25, 1984 84-1 CPD 476
BIDS--MISTAKES--CORRECTION--LOW BID DISPLACEMENT

Where a bidder alleges a mistake after bid opening, it is not then generally free to decide to waive its claim. Nevertheless, waiver will be permitted if it is clear that the intended bid would have been the lowest even though the intended bid could not be clearly proven for the purpose of bid correction. However, it is impossible to conclude that alleged mistaken bid would have been the lowest where bidder submitted conflicting claims as to amount of mistake. Therefore, GAO sustains the protest, but the only possible remedy in the circumstances is the granting of bid preparation costs.

B-212158 Apr. 25, 1984 84-1 CPD 480
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--BRAND NAME
"OR EQUAL" PROCEDURE--CONTRACTOR'S PROFITS CLAUSE

GAO recommends that the agency omit from a spare parts solicitation a clause providing that a contractor's percentage profit on substitute parts must be the same as that for name brand parts; the clause was intended to benefit the government by preventing contractors from reaping excessive profits on substitute parts, but in fact operates to the government's overall detriment by preventing offerors from factoring lower cost substitute parts into their proposed prices, and by creating a competitive advantage for the name brand manufacturer and its distributors.

B-212962 Apr. 25, 1984 84-1 CPD 477
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EXPERIENCE RATING

Where RFP requires offerors to furnish qualifications and experience of personnel to be utilized in performing contract, but does not specifically require that evidence of the availability or commitment of personnel listed be provided, agency's use of availability or commitment of listed personnel as a subcriterion in evaluating proposals is not improper.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY

Protest that agency technical evaluation was defective is denied where protester has not shown evaluation to be arbitrary.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--EXCEPTIONS--OFFERS NOT WITHIN COMPETITIVE RANGE

No discussions with offeror were required prior to determining that proposal was not within the competitive range.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--CRITERIA--APPLICATION OF CRITERIA

Protest that contracting agency failed to give preference to woman-owned business is without merit, since solicitation did not provide any preference for woman-owned business.

Where solicitation indicated that all technical criteria would be considered and given relative weights, it was proper to base evaluation on overall assessment of all criteria.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--PERSONNEL AVAILABILITY--REASONABLENESS

Downgrading scores for key personnel was proper where offeror did not provide required references or commitments.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER--WHAT CONSTITUTES NOTICE

Where contracting officer's letter notifying protester that proposal is not within competitive range lists major evaluation areas where proposal was deficient without any details of deficiencies, letter did not rise to the specificity required to place offeror on notice of basis for protest.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY

GAO does not consider protests against small business size under Bid Protest Procedures, since Small Business Administration has conclusive authority to determine matters of small business size status.

B-214110 Apr. 25, 1984 84-1 CPD 479
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
DELIVERY PROVISIONS

Bid offering delivery period greater than maximum delivery period permitted under terms of invitation was properly determined to be nonresponsive.

CONTRACTS--PROTESTS--ALLEGATIONS--PREMATURE

Where request for proposals permits award based upon initial proposals and contracting agency has not yet determined whether negotiations with offerors submitting acceptable proposals will be necessary, protest that agency should negotiate with protester is premature.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has not met its burden of affirmatively proving its contention that no deviating delivery period for first article test report was inserted in its bid where evidence consists of conflicting information supplied by protester and contracting agency.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against issuance of negotiated procurement instead of an advertised one filed after closing date for receipt of initial proposals is untimely and not for consideration.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--FAILURE TO REFER TO
SBA

Issue of nonresponsibility of bidder need not be submitted to SBA where bid was properly rejected as nonresponsive.

B-208622.3 Apr. 27, 1984 84-1 CPD 481
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--COST REALISM--
REASONABLENESS

Unsuccessful offeror's speculation that the selected firm's evaluated proposed costs may not be realistic even

after adjustments by the contracting agency based on proposal evaluation and audit support does not meet the firm's burden to prove the agency's cost realism analysis was unreasonable.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester's speculation that the successful offeror may not be able to provide key personnel on whom proposal evaluation was based, founded on inference from the selected firm's unsuccessful attempts to hire substitutes for some personnel after winning the competition, does not meet the protester's burden to prove unreasonable the agency's evaluation that the firm's staffing will be acceptable.

B-214887 Apr. 27, 1984

*GENERAL SERVICES ADMINISTRATION--TRANSPORTATION RATE AUDIT--
FUNCTION AND PERSONNEL--TRANSFERRED FROM GAO*

Request for decision concerning continued need for a particular transportation audit procedure should be directed to the General Services Administration (GSA) since GSA may prescribe which standard forms and procedures are to be used in connection with audit of government transportation payments.

B-212849 May 1, 1984 84-1 CPD 482

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Absent evidence of possible fraud or willful misconduct on the part of contracting officials, GAO will not consider protest contention that the government will not be adequately protected in the absence of more restrictive solicitation requirements.

B-213195.2 May 1, 1984 84-1 CPD 483

*BIDS--EVALUATION--DISCOUNT PROVISIONS--PROPRIETY OF
EVALUATION*

When request for reconsideration contains no factual or legal grounds upon which the prior decision should be altered, GAO affirms decision holding that consideration of prompt-payment discounts was proper where the solici-

tation includes a provision for evaluation of prompt-payment discounts, contrary to recent prohibition in FPR, and the bidders compete on this basis without timely protesting the inclusion of the provision.

B-213295 May 1, 1984 84-1 CPD 484

BIDS--PREPARATION--COSTS--NONCOMPENSABLE--PROTESTER NOT LOW BIDDER

A bidder is not entitled to recovery of bid preparation costs where it was not entitled to contract award.

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--DESCRIPTIVE LITERATURE

Agency acted improperly in accepting bid which did not include required descriptive data based on bidder's oral assurance that item offered met specification requirements.

BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--CONFORMABILITY OF EQUIPMENT, ETC. OFFERED

Where specifications require air conditioning unit to meet particular dimensions, it is questionable whether units which do not meet those dimensions but which can be made to fit existing openings through use of mounting brackets properly may be accepted.

B-213369 May 1, 1984 84-1 CPD 485

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--CRITERIA--CHANGED

An agency may not depart in any material way from evaluation plan set forth in a solicitation without informing offerors and giving them a chance to structure their proposals with the new evaluation plan in mind.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--COSTS--RECOVERY

Proposal preparation costs are awarded where the agency improperly evaluated the protester's proposal and the protester had a substantial chance of receiving the award except for the agency's improper action.

B-213369 May 1, 1984 84-1 CPD 485 - Con.
CONTRACTS--NEGOTIATION--PRICES--BELOW COSTS--EFFECT ON
RESPONSIBILITY

Absent a finding of nonresponsibility, the government cannot withhold contract award merely because the low offer is considered unreasonably low where contract award is not on a cost reimbursement basis.

B-213516 May 1, 1984 84-1 CPD 486
CONTRACTS--REQUESTS FOR QUOTATIONS--COMPETITION--EQUALITY
OF COMPETITION

Protester's complaint that it could have offered lower prices if it had offered replacement parts provides no basis for sustaining protest where protester had opportunity to quote on that basis but did not do so.

CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--SITE
VISITS

Protest that awardee's failure to inspect site where services are to be performed is without merit as solicitation language requested site visit without making it mandatory.

B-213960 May 1, 1984 84-1 CPD 487
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

GAO will not consider the merits of an allegation that more restrictive specifications are necessary to serve the government's interest. A protester's presumable interest as a beneficiary of more restrictive specifications is not protectable under our bid protest function, which is intended to ensure that the statutory requirements for free and open competition are met.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--OVERSTATED

An offeror was not prejudiced by an RFP specification which may have overstated the agency's actual minimum

needs where the firm was only able to furnish a system which in fact exceeded the agency's actual needs at a higher price than the successful offeror's.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Whether a contractor is performing in accordance with contract terms regarding date of delivery is a matter of contract administration for resolution by the contracting agency, not GAO.

*B-214124 May 1, 1984 84-1 CPD 488
BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--WORKSHEETS*

Although questions concerning portions of worksheets which have little or no relation to the type of error alleged or to the work affected usually do not preclude bid correction where clear and convincing evidence establishes the mistake and the bid intended, nevertheless it is significant in determining the bid intended that the worksheets of a bidder alleging a mistake in regard to brickwork do not reveal what provisions were made for profit and general, unallocated overhead costs, since the apparent failure to provide for these customary items in calculating the allegedly intended bid price calls into question whether it indeed was the price intended.

Contracting agency acted without a reasonable basis in correcting alleged mistake in bid where worksheets submitted by bidder contained significant unexplained discrepancies rendering the intended bid price uncertain. Although GAO has on occasion found worksheets to be the clear and convincing evidence of a mistake, the manner in which it occurred and the intended bid price required in order to permit correction, the worksheets must be in good order and there must be no contravening evidence.

*BIDS--MISTAKES--WITHDRAWAL--EVIDENCE OF ERROR--DEGREE OF PROOF
LESS THAN FOR CORRECTION*

By contrast with the clear and convincing evidence of a mistake, how it occurred and of the intended bid price required for bid correction, withdrawal of a bid for reason of mistake requires a lesser degree of proof and may be permitted if it reasonably appears that an error was made.

*B-214667.2 May 1, 1984 . 84-1 CPD 489
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging defects in a solicitation for stenographic services that was filed concurrent with bid opening is untimely since GAO Bid Protest Procedures require such protests to be filed prior to bid opening.

*B-214860 May 1, 1984 84-1 CPD 490
BIDS--LATE--TELEGRAPHIC MODIFICATIONS--DELAY DUE TO WESTERN
UNION*

Telegraphic bid modification received more than 2 hours after bid opening is properly rejected as late despite submission of modification by protester to Western Union more than 5 hours before bid opening, absent evidence that the late receipt was due to government mishandling.

*B-212215.2, B-212215.3 May 2, 1984 84-1 CPD 491
CONTRACTS--PROTESTS--TO AGENCIES, ETC. OTHER THAN GAO--
INITIAL ADVERSE AGENCY ACTION--WHAT CONSTITUTES--SOLICITATION
IMPROPRIETIES*

Solicitation amendment that did not foreclose the possibility of further agency consideration of one of the issues raised in a protest to the contracting officer will not be considered adverse agency action on that issue.

CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

Where letter to agency expresses dissatisfaction with small business restriction contained in a solicitation and requests that that restriction be deleted, GAO will consider the letter an adequate expression of an intent to protest notwithstanding the fact that the word "protest" was not used.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REASONABLE EXPECTATION OF
COMPETITION*

Contracting officer could reasonably conclude that adequate small business competition could be expected so as to justify setting aside a procurement exclusively for

small business participation when the information available to the contracting officer indicated that there were four small business finishers capable of producing the cloth required by the solicitation.

B-212665.3 May 2, 1984 84-1 CPD 492

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

On reconsideration, prior GAO decision is affirmed where the protester fails to establish that the decision was based on errors of law or overlooked relevant evidence.

B-212852 May 2, 1984 84-1 CPD 493

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest that awardee does not have personnel, experience or financial resources to perform a contract raises an issue of the awardee's responsibility which GAO will not review without a showing of fraud on the part of procuring agency or that solicitation contains definitive responsibility criteria which allegedly have been misapplied.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--CRITERIA--APPLICATION OF CRITERIA

Procuring activity's evaluation of awardee's proposal containing resumes of proposed personnel who were obligated by letters of commitment to perform the contract was reasonable where the RFP contemplates the use of such employees to satisfy the personnel requirement.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--INDEPENDENT INVESTIGATION AND CONCLUSIONS--SPECULATIVE ALLEGATIONS

Procuring activity is not required to debrief protester on protest filed in GAO against awardee. Procuring activity's postponement of a debriefing on protester's proposal is a procedural matter which does not affect the validity of an award.

*B-212852 May 2, 1984 84-1 CPD 493 - Con.
CONTRACTS--PROTESTS--PROTEST AND DEBRIEFING PROCEDURES*

GAO will not conduct investigations under its bid protest function to establish the validity of protester's speculative statements. Assertions which are criminal in nature should be referred by the protester to the Department of Justice.

*B-212997 May 2, 1984 84-1 CPD 494
CONTRACTS--GRANT-FUNDED PROCUREMENTS--SPECIFICATIONS--
MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--
REASONABLENESS*

Complaint that life cycle cost penalties and credits incorporated in a grant-funded procurement solicitation create unduly restrictive specifications is denied because complainant has failed to show that the penalties and credits do not reflect minimum needs and are not reasonably related to the grantee's intended goal of insuring that the long term cost of the procurement will be minimized.

*B-213023 May 2, 1984 84-1 CPD 495
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Whether the awardee satisfied responsibility standards set forth in the regulations concerns the contracting officer's determination that the awardee is responsible; GAO will not review such determinations absent a showing of possible fraud or bad faith by government officials, or that definitive responsibility criteria were not met.

Whether an awardee's offered price is unreasonably low and whether the awardee will be able to perform satisfactorily at its below cost bid price are matters of the awardee's responsibility, which GAO will not review under the circumstances here.

B-213023 May 2, 1984 84-1 CPD 495 - Con.
CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

A protester's speculation that certain events and agency actions were motivated by the agency's desire to avoid contracting with the protester is not sufficient to establish agency bad faith; to prove bad faith, the protester must present virtually irrefutable evidence that agency officials acted with a specific and malicious intent to injure the protester.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protests based on alleged solicitation improprieties are untimely, and not for consideration, where filed subsequent to the time set for receipt of initial proposals.

B-213180 May 2, 1984 84-1 CPD 496
BIDS--RESPONSIVENESS--NONRESPONSIVE ALTERNATIVE BID--EFFECT ON CONFORMING BASE BID OR OTHER ALTERNATIVES

The inclusion of nonresponsive alternative bid does not preclude consideration of the bid that conforms to the IFB's requirements.

B-213396.2 May 2, 1984 84-1 CPD 497
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ORIGINAL DECISION RENDERED IN RESPONSE TO COURT REQUEST--COURT NOT INTERESTED IN GAO RECONSIDERATION

Request for reconsideration is dismissed where issues raised are before a court of competent jurisdiction and the court, which expressed an interest in a decision by GAO, has not indicated any interest in having GAO reconsider the decision.

B-213682.2 May 2, 1984 84-1 CPD 498
CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS

GAO decision dismissing a potential subcontractor's protest against a subcontract award is affirmed where,

upon request for reconsideration, the protester fails to demonstrate that the contracting agency acted fraudulently or in bad faith in approving the subcontract.

FREEDOM OF INFORMATION ACT--DISCLOSURE REQUESTS--RECORDS OF AGENCIES, ETC., OTHER THAN GAO--AUTHORITY OF GAO TO REQUIRE DISCLOSURE

GAO has no authority under the Freedom of Information Act to determine what information government agencies must disclose.

B-213755 May 2, 1984 84-1 CPD 499

GENERAL ACCOUNTING OFFICE--JURISDICTION--TRANSPORTATION CHARGES

While a transportation overcharge claim by the General Services Administration generally is not reviewable by the GAO until the disputed amount has been deducted by the government, 4 C.F.R. 53 (1983), GAO will review the validity of the carrier's allegations where the parties expect a decision after full development of record.

TRANSPORTATION--BILLS OF LADING--NOTATIONS--COMPLIANCE WITH TARIFF RULE

Although carrier's business document indicates a request for priority service, carrier has failed to sustain the burden of showing a request for such service since the bill of lading, which constitutes the contract of carriage, did not bear a notation requesting such service as required by the governing tariff and the contracting agency reports that no such service was requested.

B-213988 May 2, 1984 84-1 CPD 500

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Where military agencies require capability to conduct mass inoculations on short notice away from permanent military facilities, solicitation specification restricting procurement to foot-powered hypodermic injectors is reasonable since agency's minimum needs require devices which operate independent of any outside power source.

BIDS--COLLUSIVE BIDDING--ALLEGATIONS UNSUPPORTED BY EVIDENCE

Allegations concerning purchase of one bidder by another and subcontracting arrangements do not constitute evidence of collusive bidding in violation of the Certification of Independent Price Determination. If protester has additional, specific information, it should be presented to contracting officer for possible forwarding to the Department of Justice.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility unless there is a showing of possible fraud on the part of the contracting officials on an allegation that definitive responsibility criteria have been misapplied.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--ALLEGATION OF BIAS NOT SUSTAINED

Protester alleging bias has the burden of proof, and where the record fails to demonstrate bias, GAO regards protester's allegations as mere speculation. Even if bias is proven, GAO will deny protest if there is no indication that it adversely affected the protester's competitive standing.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest against cancellation and resolicitation, filed more than 10 working days after protester knew or should have known basis for protest, is untimely, and GAO will not consider it.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider protests relating to the size status of a small business because under the Small Business Act, 15 U.S.C. 637(b)(6), the Small Business Administration has conclusive authority to determine size status.

*B-214034 May 2, 1984 84-1 CPD 501 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Allegation that awardees are not meeting contract requirements relates to contract administration and is not for consideration under GAO Bid Protest Procedures.

GAO will deny protest based on contracting officer's failure to consider responsibility of firm that was not low bidder, since award must be made to the lowest responsive, responsible bidder.

*B-214892, B-212894 May 2, 1984 84-1 CPD 502
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest regarding the acceptability of the awardee's parts are dismissed as untimely where the awardee's parts were identified in the solicitations as acceptable but the protests to GAO were not filed until after the closing dates for receipt of quotations.

*CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--
RESTRICTIVE--AGENCY DETERMINATION TO USE LESS RESTRICTIVE
SPECIFICATIONS*

Protester's complaints regarding the solicitations' identification of a competitor's parts as acceptable are essentially allegations that the solicitations were not sufficiently restrictive, a matter that GAO generally will not consider under its Bid Protest Procedures.

*B-214907 May 2, 1984 84-1 CPD 503
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest not received in our Office within 10 working days after the protester knew or should have known of the basis of its protest is untimely and will not be considered.

B-214913 May 2, 1984 84-1 CPD 504
AGENTS--OF PRIVATE PARTIES--AUTHORITY--CONTRACTS--SIGNATURES--
CONFIRMATION--AFTER BID OPENING

A bidder's post-bid opening confirmation that the individual who signed the bid was authorized to do so is sufficient to overcome a challenge to the signer's authority.

B-214980 May 2, 1984 84-1 CPD 505
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS
RESTRICTIVE--AGENCY DETERMINATION TO USE LESS RESTRICTIVE
SPECIFICATIONS

Protest asserting that solicitation should be restrictively drawn to place protester in a sole-source position is inappropriate for review under GAO bid protest function, since it conflicts with objective of that function, specifically, to insure attainment of full and free competition.

B-212403.4 May 3, 1984 84-1 CPD 506
CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE
RESPONSIBILITY CRITERIA--WHAT CONSTITUTES

An item in an RFP which provides that a contract may not be awarded to an offeror which has not complied with all provisions does not make other provisions in the RFP definitive responsibility criteria.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

A protest against the affirmative responsibility determination (involving definitive criteria) of the contractor which was first raised in comments on the agency report and is based on information in the agency report is untimely under our Bid Protest Procedures when not received in our Office within 10 days after the agency report was received by the protester.

B-212403.4 May 3, 1984 84-1 CPD 506 - Con.
LABOR DEPARTMENT--JURISDICTION--SERVICE CONTRACT ACT
VIOLATIONS

Protest that award to offeror which does not intend to pay to its employees social benefits required by German law will constitute a violation of the Status of Forces Agreement with Germany involves contract administration which our Office will not review.

B-214714 May 3, 1984 84-1 CPD 509
CONTRACTS--PROTESTS--ISSUES IN LITIGATION

Protest is dismissed where the material issues are before a court of competent jurisdiction and the court has not expressed any interest in receiving GAO's opinion.

B-215056 May 4, 1984 84-1 CPD 510
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties apparent in a solicitation must be filed prior to bid opening.

B-213356 May 7, 1984 84-1 CPD 511
CONTRACTS--NEGOTIATION--CHANGES, ETC.--ORAL V. WRITTEN

Contracting agency is authorized to conduct an oral solicitation where urgent need for requirement does not permit the delay attendant to the processing of a written solicitation. By necessary implication, oral amendments to a written solicitation, even if not subsequently confirmed, are also authorized where exigent circumstances will not permit any delay.

CONTRACTS--NEGOTIATION--ORAL SOLICITATIONS, ETC.--VALIDITY

Where contracting agency solicits quotes orally, misunderstandings are likely to arise. Therefore, misunderstandings concerning oral solicitation terms do not establish a valid basis for protest unless the

protester shows that it was intentionally misled by contracting personnel or that use of an oral solicitation was unreasonable under the circumstances.

*B-214015 May 7, 1984 84-1 CPD 512
CONTRACTS--PROTESTS--ALLEGATIONS--PREMATURE*

Protest alleging that agency improperly will deny award to the protester is speculative and premature and will not be considered.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

Protest that bid was improperly rejected as late is dismissed where "late" quotation was higher than timely filed quotations. No useful purpose would be served by our consideration of the matter because, even if protest was sustained, protester would not be in line for award.

CONTRACTS--PROTESTS--PROCUREMENT PENDING REQUIREMENT

Under Bid Protest Procedures, GAO considers the propriety of an award or proposed award and not general allegations that the agency failed to follow procedures under past and present procurements.

CONTRACTS--PROTESTS--SUSTAINED

Protest is sustained where agency agrees with protester and takes corrective action.

*B-213239 May 8, 1984 84-1 CPD 513
BIDS--MISTAKES--CORRECTION--INTENDED BID PRICE--ESTABLISHMENT REQUIRED*

Agency properly allowed bidder to withdraw its bid rather than permit correction where, although there was clear and convincing evidence that a mistake had occurred in totaling the bidder's direct costs, the only evidence that other components of the bid would be unaffected by a change in the amount for direct costs

was the bidder's affidavit, and the corrected bid (assuming the other components remained unaffected) would come within approximately 1.5 percent of the next low bid.

B-213725 May 8, 1984 84-1 CPD 514

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Protest alleging that technical support services to be procured by agency are not germane to agency's responsibilities and is duplicative of efforts undertaken by other government agencies is denied where protester fails to demonstrate that agency has exercised its discretion unreasonably in establishing its minimum needs.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--ONE KNOWN SOURCE

Agency decision to sole-source contract to Federal Contract Research Center (FCRC) is justified where record shows that reasonable basis exists for agency determination that only FCRC could meet agency's needs.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

Where agency decision to sole-source contract to FCRC is justified, private corporation is not an interested party to question qualifications of particular FCRC-awarded contract since private corporation would not be eligible for award.

B-213581, B-213668 May 9, 1984 84-1 CPD 575

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--QUALIFIED PRODUCTS--LISTING--REMOVAL FROM LIST

Whether a product should be removed from a qualified products list is a matter for the determination of the qualifying activity, and GAO will not question that determination unless it is shown to be arbitrary or capricious.

*BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS SATISFIED--
OFFERED PRODUCTS ON QUALIFIED PRODUCTS LIST*

Where invitation required that offered products be on the applicable qualified products list, bid of items on the list is responsive notwithstanding competitor's complaint that requalification should be required, since bid does not take exception to invitation's requirements.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Whether contractor performance will comply with the invitation's specifications relates to the bidder's responsibility and to contract administration. GAO does not review affirmative determinations of responsibility except in circumstances not present here, and contract administration is a function of the contracting agency.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--FAILURE TO MEET QUALIFIED PRODUCTS LIST REQUIREMENT*

A protest that competitor's product, although on the applicable qualified products list, does not meet the requirements for qualification, must be filed within 10 days of the discovery of the alleged defect in the competitor's parts.

CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

In a protest to the agency, a protester need not expressly state that it "protests"; rather, the intent to protest may be conveyed by an expression of dissatisfaction and a request for corrective action.

B-213796, B-213810 May 9, 1984 84-1 CPD 516
BIDS--COMPETITIVE SYSTEM--GOVERNMENT OWNED EQUIPMENT,
FACILITIES, ETC. USE--CONTRACTS TO OPERATE GOVERNMENT
FACILITIES

Regulation stating that contractors should furnish all facilities needed for the performance of government contracts applies to contracts normally performed with a contractor's own facilities and is not applicable to contracts for the operation of government facilities, which necessarily requires contractor use of government owned facilities and equipment. Thus, the regulation does not prevent the government from contract for the operation of a government-owned laundry and dry cleaning facility.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
GOCO V. COCO BASIS

Contention that a solicitation seeking bids to provide laundry and dry cleaning services in a government-owned/contractor-operated (GOCO) facility is unduly restrictive because it does not permit bids on a contractor-owned/contractor-operated basis will not be considered because the decision to have the services performed in a GOCO facility is a management/policy determination for the agency to make and is not reviewable under GAO's Bid Protest Procedures.

B-213835 May 10, 1984
TRANSPORTATION--HOUSEHOLD EFFECTS--DAMAGE, LOSS, ETC.--CLAIMS

Where it cannot be established clearly whether certain losses and damages to household goods occurred while the shipment was in the custody of the carrier or the government, which acted as a participating carrier, the Navy should compromise the claim against the carrier for 50 percent of the carrier's contractual liability contingent upon the carrier's prompt settlement at this amount, as provided in an agreement between the military services and representatives of the carrier industry.

B-212971 May 14, 1984 84-1 CPD 517

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative determination of responsibility absent circumstances not applicable here.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Initial proposal is properly excluded from the competitive range where information necessary to evaluate the proposal was omitted.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

Protest that procuring activity arbitrarily relaxed specifications to make awardee's proposal acceptable is without merit where RFP contemplates offerors proposing alternate specifications and awardee proposed such specifications and provided rationale required by the RFP.

B-213134 May 14, 1984 84-1 CPD 518

BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--ADEQUACY

Where clause in invitation for bids requires submission of manufacturer's descriptive literature showing compliance with requirements in 14 specific areas, only reasonable reading of clause is that descriptive literature must show compliance with essential requirements in those areas and need not show compliance with every detail of specifications.

Protester's disagreement with agency determination that awardee's descriptive literature showed compliance with essential requirements of specifications is not sufficient to overturn that determination, since that determination must stand unless it is shown to be clearly unreasonable.

*B-213149 May 14, 1984 84-1 CPD 519
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--ADMINISTRATIVE APPEAL UPHOLDING DETERMINATION TO
PERFORM IN-HOUSE--REASONABLENESS OF APPEAL DETERMINATION*

Protest alleging that contracting agency failed to recognize past statistics and actual employment opportunities for federal employees affected by contracting out under Circular A-76 is denied, since situation is largely judgmental matter and, while protester may disagree with contracting agency as to employment outlook, that does not mean that contracting agency's own forecast for its employees is wrong.

*B-213188 May 14, 1984 84-1 CPD 520
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CONSTRUCTION--
ORAL ADVICE*

Where only evidence in the record indicates that the agency received protester's request for clarification of specifications the afternoon before the closing date for receipt of proposals, the agency acted reasonably by not responding to the request since there was insufficient time for a reply to reach prospective offerors before submission of their offers and there was no apparent need to issue a clarification.

Agency's refusal to respond to request for clarification of specifications by telephone is reasonable in that there was insufficient time to reach all offerors and it is discretionary to provide oral explanations.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest that there were deficiencies in solicitation specification is untimely where filed after the closing date for receipt of proposals.

B-213297 May 14, 1984 84-1 CPD 521

CONTRACTS--OPTIONS--EXERCISE--ADMINISTRATIVE DISCRETION

Protest that an option to lease secure facsimile machines was improperly exercised is denied, since the protester has not shown that the contracting agency did not follow applicable regulations or acted unreasonably.

B-213774 May 14, 1984

TRANSPORTATION--CARRIERS--LIABILITY--EVIDENCE

Under applicable regulations, the government may terminate a shipment prior to delivery and separately arrange for onward movement to the destination when the shipment becomes frustrated due to nontraceable or nonavailable documentation attributable to the fault of the carrier or its agents. Here, however, the charge for the separate delivery was improperly deducted from the carrier's bill where the evidence did not establish that the documentation became lost when the shipment was still in the carrier's control.

B-213080 May 15, 1984 84-1 CPD 524

BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--WORKSHEETS

Where mistake in bid is alleged prior to award and the bidder presents clear and convincing evidence of a mistake in the bid and of the bid actually intended by submitting worksheets used in preparing cost estimates and where bid as corrected remains low, there is a reasonable basis for the agency determination to allow bid correction so as to reflect the intended bid.

B-213842 May 15, 1984

TRANSPORTATION--CARRIERS--LIABILITY--EVIDENCE

Where new evidence submitted by carrier establishes that seal applied to shipment at origin was the same seal broken at destination, carrier has established clear seal record, and reasonable presumption arises that no loss occurred in transit.

B-214142.2 May 15, 1984 84-1 CPD 526
CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

Time for fixing date of protest is when protest is made and not when protester indicates an intention to file a future protest.

B-214905 May 15, 1984 84-1 CPD 527
CLAIMS--PRIORITY--TAXES V. COMPETING CLAIMS

Payment of withheld contract funds that are claimed by payment bond surety, the DOL for wage underpayments, and the IRS for tax indebtedness may be made in the full amount of the DOL claim, then of the IRS claim, with the remaining balance payable to the surety.

B-211645 May 18, 1984 84-1 CPD 528
*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

Even if protester could have reduced its price by \$2.2 million had protester known of relaxed requirements allegedly applied to selected vendor, GAO in camera review discloses that protester would not have been competitive. Protester therefore was not prejudiced and protest is academic.

B-213844.2, B-214343 May 18, 1984 84-1 CPD 529
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protests that the contracting agency improperly restricted competition for shipboard pump impellers by citing a particular manufacturer's code and part number is dismissed where the protests were received after bid opening.

B-214180 May 18, 1984 84-1 CPD 530
*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Protester's contention that a solicitation requirement should be interpreted more restrictively than in-

tneded by the agency will not be considered since it is contrary to the purpose of the bid protest function to assure that full and free competition is attained.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

GAO dismisses a protest alleging that the contracting agency's interpretation of a solicitation requirement is inconsistent with a Determination by the Undersecretary of Defense establishing the conditions for such procurements. Since the protester was aware that the solicitation language clearly differed from that in the Determination it should have requested clarification from the agency prior to bid opening. In addition, the matter is now essentially academic, because a subsequent modification to the Determination establishes that the agency's interpretation, which expanded the field of competition, was proper.

B-214737.3 May 18, 1984 84-1 CPD 531

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

A protest against an alleged impropriety in an invitation for bids submitted in an envelope which the agency did not open until bid opening because of a reasonable belief that the envelope contained a bid is untimely because GAO Bid Protest Procedures require the filing of a protest prior to, not at, bid opening.

B-195482 May 21, 1984

*TRANSPORTATION--RATES--EXPLOSIVES--POINT-TO-POINT SPECIFIC
RATE APPLICABLE*

The fact that government bills of lading did not use the exact point of origin designation set forth in a published point-to-point specific rate for shipment of surplus powder fails to establish that the government intended to apply a substantially higher mileage rate, since it is illogical to assume the lower rate does not apply.

B-213606.2 May 21, 1984 84-1 CPD 533
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST

GAO will not reopen case which was closed because the protester did not send a timely indication of its continued interest in the protest to GAO after receiving the agency report where the protester submits comments on the report more than 5 weeks after GAO requested a statement of continuing interest in the protest within 10 working days and protester does not present any reason for not commenting within the time prescribed.

B-213607.2, B-213608.2 May 21, 1984 84-1 CPD 534
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST

GAO will not reopen cases which were closed because the protester did not send an indication of its continued interest in the protests within 10 days after receiving the agency report where protester alleges not to have received letter from GAO requesting such a statement because protester is charged with constructive knowledge of this obligation.

B-215139 May 21, 1984 84-1 CPD 535
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
GOVERNMENT MISHANDLING DETERMINATION

Protester's proposal, delivered by commercial carrier, which was late because it was misaddressed to an office other than that designated in the solicitation, was properly rejected since improper government action was not the paramount cause for the late receipt.

B-212533 May 22, 1984 84-1 CPD 536
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--WHAT CONSTITUTES NOTICE

Protest that equipment offered by proposed awardee under step one of two-step procurement does not meet solicitation's mandatory specifications is timely even though initially submitted more than 2 months after contracting

agency announced in Commerce Business Daily (CBD) that protester's and proposed awardee's offers under step one were both considered acceptable. CBD announcement did not indicate what equipment had been offered and protester states it was first told what proposed awardee's offered models were on or about step-two bid opening date. In the absence of any evidence to show that protester knew basis for protest earlier, protest initially filed within 10 days after protester was told what models its competitor had offered meets timeliness requirements of section 21.2(b)(2) of GAO Bid Protest Procedures. Distinguishes B-189661, Feb. 3, 1978 and B-189071, Oct. 3, 1977.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL
PROTEST BASIS*

Issues raised in supplemental protest letter filed 2 months after initial protest must independently satisfy timeliness requirements. Even though protester filed supplemental protest within 10 days after receipt of information from contracting agency under Freedom of Information Act (FOIA), record shows that FOIA information did not reveal basis for protest and protester--which was very familiar with equipment offered by proposed awardee as evidenced by the initial protest--should have known the new issues raised in supplemental letter when it filed initial protest. Therefore, later-raised issues are untimely and will not be considered.

*CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS-
EVALUATION--TECHNICAL ACCEPTABILITY*

Protest that word processing system offered by low bidder under two-step procurement should have been rejected as technically not acceptable is denied where GAO cannot find that contracting agency's determination of low bidder's technical acceptability was unreasonable or inconsistent with solicitation's requirements.

B-212666 May 22, 1984 84-1 CPD 537
CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTEST TIMELINESS

In state procurement funded by federal grant, a complaint alleging deficiencies apparent on the face of a solicitation must be filed before bid opening. Where conflicting statements of the complainant and the grantor agency are the only evidence of alleged instructions that complainant should delay filing its complaint until after bid opening, the complainant has not met its burden of proving that such instructions were given. Accordingly, where complaint was filed after bid opening, it is untimely.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL SUBCONTRACTORS

GAO, under its procedures for reviewing the propriety of procurements conducted by grantees, will consider a complaint from a potential subcontractor that specifications in a solicitation issued by a grantee unduly restricted competition.

B-212994 May 22, 1984 84-1 CPD 538
CONTRACTS--GRANT-FUNDED PROCUREMENTS--BIDS--COSTS IN BID--UNDERSTATED

An allegation that an awardee unreasonably understated certain costs in its offer is without merit where award was not based on cost and, even if the costs were understated, there is no evidence that the awardee's bid would have been more costly than the complainant's.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--BIDS--LIFE CYCLE COSTS--SUBSTANTIATION

A grantee agency may reject a bid where the sources of the life cycle cost estimates contained in the bid are not substantiated.

B-213046.4 May 22, 1984 84-1 CPD 539
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determination of responsibility unless there is a showing of possible

fraud on the part of the contracting officials or an allegation that definitive responsibility criteria have been misapplied.

*CONTRACTS--NEGOTIATION--COMPETITION--INCUMBENT CONTRACTOR--
COMPETITIVE ADVANTAGE*

Solicitation requirements are not objectionable merely because they might be more easily met by an incumbent contractor than by other offerors; a competitive advantage gained by virtue of a firm's incumbency is not an unfair advantage which must be eliminated.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of proposals must be filed prior to that date. 4 C.F.R. 21.2(b)(1) (1983).

B-213059 May 22, 1984 84-1 CPD 540

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
JUSTIFICATION--INACCURATE SPECIFICATIONS*

The use of specifications which do not adequately describe the government's actual needs provides a compelling reason to cancel an invitation after bid opening where necessary revisions to the specifications are material.

B-213059 May 22, 1984 84-1 CPD 540

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
ISSUANCE EFFECT ON CANCELLATION OF SOLICITATION*

The Small Business Administration's issuance of a certificate of competency requires that the contracting agency not require the bidder to meet any other standards of responsibility, but does not compel the government to make an award if the specifications are found defective.

*B-213245.3 May 22, 1984 84-1 CPD 541
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Original decision sustaining a protest is affirmed where interested party fails to establish in its reconsideration request that the decision was based on errors of law or did not take into consideration all relevant evidence and arguments timely presented.

*B-213575 May 22, 1984 84-1 CPD 543
CONTRACTS--NEGOTIATION--COMPETITION--FAILURE TO SOLICIT FROM
ALL SOURCES*

An offeror bears the risk of nonreceipt or delay in receipt of solicitations absent substantive proof that the agency deliberately attempted to exclude the offeror from participating in the procurement. GAO finds that the protester's failure to submit an offer by the closing date for submission of proposals was, ultimately, the protester's own fault.

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--RULE--
EXCEPTIONS--APPLICABILITY*

Protester's attempt to submit a late proposal was properly rejected by the contracting agency since any proposal protester could have submitted would not have met exceptions listed in the solicitation for the consideration of late offers.

*B-213677 May 22, 1984 84-1 CPD 544
BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED*

Where protester bid a two-roll flatwork commercial ironer in response to a specification which called for a four-roll ironer, bid was properly rejected as nonresponsive.

B-213677 May 22, 1984 84-1 CPD 544 - Con.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Allegation that it was improper for agency to use design specifications as opposed to performance specifications will not be considered because it was untimely raised after bid opening.

B-213784 May 22, 1984

CLAIMS--TRANSPORTATION--EVIDENCE--SUFFICIENCY

Evidence of carrier's failure to deliver the same goods at destination as received at origin and amount of damages establish liability of carrier for loss in transit; burden is then on carrier to rebut prima facie case of liability.

B-213900 May 22, 1984 84-1 CPD 545

BIDS--QUALIFIED--BID NONRESPONSIVE

The award of government contracts by formal advertising must be made on the same terms that were offered to all bidders by the invitation. Although inconsequential or immaterial defects or variations that do not affect price, quantity or quality may be waived, an irregularity in a bid resulting in benefits to a bidder not extended to all bidders by the invitation renders the bid nonresponsive.

B-213978 May 22, 1984 84-1 CPD 546

CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD

Award of a contract notwithstanding notice of a protest is a procedural deficiency that does not affect the validity of an award.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
AMBIGUOUS--CLARIFICATION PROPRIETY

When after submission of best and final offers, information is requested for the purpose of eliminating a minor uncertainty or irregularity,

rather than for determining whether proposals are acceptable, and offerors are not permitted to change their proposals, clarification rather than discussion has occurred, and new best and final offers are not required.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

When only evidence on an issue of fact is a protester's statement that conflicts with that of contracting officials, the protester has not carried its burden of proof.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

GAO Bid Protest Procedures require alleged deficiencies that are apparent on the face of an amendment to be protested before the next closing date and other alleged improprieties to be protested within 10 working days after the basis for protest is known or should have been known. Protest that does not meet these criteria will be dismissed as untimely.

B-214036.2 May 22, 1984 84-1 CPD 547

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Allegations unsupported by evidence in the written record are regarded as mere speculation.

CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--PROTEST NOT FOR CONSIDERATION ON THE MERITS

Where it is clear that a protest involves matters which GAO does not consider, GAO will dismiss protest without holding a conference which would serve no useful purpose.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF COMPETENCY REQUIREMENT

Absent a showing of fraud or bad faith on the part of contracting officials, GAO will not review a contracting

officer's determination that a small business concern is nonresponsible where the SBA affirms that determination by refusing to issue a certificate of competency.

B-214295 May 22, 1984 84-1 CPD 548

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--REASONABLE BASIS--CHANGED CONDITIONS, NEEDS, ETC.

In a negotiated procurement, cancellation of a solicitation requires only a reasonable basis, as distinguished from the cogent and compelling reason required to cancel a formally advertised solicitation after bid opening. This rule also applies to a solicitation for a lease that has been negotiated.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--FUTURE PROCUREMENTS

GAO will not retain jurisdiction of a protest when the solicitation has been properly canceled, even though the protester so requests. If, upon issuance of a new solicitation, the protester believes it has been improperly excluded from the competition, it may file a new protest under GAO Bid Protest Procedures.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--SOLICITATION CANCELED

As a general rule, cancellation of a solicitation renders a protest alleging that an agency does not intend to adhere to the evaluation criteria announced in that solicitation academic, and GAO will dismiss the matter.

B-214594.2 May 22, 1984 84-1 CPD 549

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--FUTURE PROCUREMENTS

Methods and procedures employed by Defense Contract Administrative Services Region in conducting preaward survey are not for review under GAO Bid Protest Procedures, which are reserved for determining the propriety of an award or proposed award of a government contract.

*B-214594.2 May 22, 1984 84-1 CPD 549 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

Small Business Administration is authorized by statute to determine conclusively all elements of small business responsibility. If it refuses to issue a certificate of competency, GAO regards this as an affirmation of the contracting agency's non-responsibility determination, reviewable only if there is a showing of possible fraud or bad faith on the part of contracting officials or that material evidence was not considered by SBA.

*B-214612.2 May 22, 1984 84-1 CPD 550
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed where request for reconsideration fails to specify information not previously considered or to demonstrate that errors of law exist in the prior decision.

*B-214918 May 22, 1984 84-1 CPD 551
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility except in limited circumstances.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Whether contractor performs in accordance with all the terms and conditions of the contract is a matter of contract administration, which is the responsibility of the procuring agency and not GAO.

*B-214946 May 22, 1984 84-1 CPD 552
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

To establish bad faith, the courts and GAO require presentation of virtually irrefutable proof that government officials had a "specific and malicious

intent" to injure the protester. Neither communications between contracting officials and the Small Business Administration (SBA) nor the fact that SBA headquarters does not concur with the proposed affirmative determination of a regional office meets this criterion.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--DELAYED--
CERTIFICATE OF COMPETENCY PROCESSING TIME*

Contracting officer is only required to withhold award for up to 15 working days following receipt by SBA of a nonresponsibility determination, so that award approximately 6 months after preaward survey in which questions were raised concerning protester's financial resources is not improper.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

GAO generally will not review a Small Business Administration (SBA) decision to issue or not to issue a certificate of competency, since the Small Business Act gives SBA conclusive authority to determine all elements of small business responsibility. The only exceptions are when there is a showing of possible fraud or bad faith on the part of contracting officials or when it is alleged that SBA did not follow its own regulations or did not consider material information in denying the certificate of competency.

There is no requirement that an offeror be provided an opportunity to submit information other than that in its initial application for a certificate of competency. To avail themselves of the protections provided by statute and regulation against possible unreasonable nonresponsibility determinations, small business concerns must file complete and acceptable applications with the Small Business Administration.

Unsuccessful applicant for a certificate of competency may request a meeting with the Small Business Administration to discuss the matter.

Such meetings, however, are for the sole purpose of enabling the applicant to improve or correct deficiencies, and do not provide a basis for re-opening the procurement for which the certificate has been denied.

*B-214948 May 22, 1984 84-1 CPD 553
CONTRACTS--DISCOUNTS--PAYMENT DATE DETERMINATION*

Where contract provision states that for the purpose of earning a prompt payment discount payment is deemed made on the date the government check is mailed, that provision controls.

*B-214985 May 22, 1984 84-1 CPD 554
CLAIMS--PRIORITY--TAXES V. COMPETING CLAIMS*

Where a Miller Act payment bond surety and the contractor had notified the agency of the surety's right to any contract retainages, but where the agency had erroneously made final payment to the contractor and a federal tax lien had attached to the final payment before the contractor could forward the final payment to the surety, the agency is not liable to the surety since a tax claim has priority over the claim of a payment bond surety.

*B-214991 May 22, 1984 84-1 CPD 555
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against defective specifications is dismissed as untimely when not received by contracting agency or GAO prior to the time set for bid opening.

*B-215030 May 22, 1984 84-1 CPD 556
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--
ADMINISTRATIVE DETERMINATION--LABOR DEPARTMENT REVIEW*

Whether offeror is regular dealer or manufacturer under Walsh-Healey Act is for determination by contracting agency subject to final review by Small Business Administration, where offeror is small business, and Department of Labor and, thus, will not be considered by GAO.

B-215100 May 22, 1984 84-1 CPD 557
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Where initial protest to contracting agency
is timely filed, subsequent protest to GAO is
dismissed as untimely.

B-213603.2 May 23, 1984 84-1 CPD 558
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--HAND
CARRIED--DELAY NOT DUE TO GOVERNMENT ACTION

Hand-delivered proposal received after time set for
receipt of proposals may not be considered under late
proposal clause where significant cause of late deli-
very was protester's failure to allow sufficient time
for delivery rather than wrong directions given pro-
tester's representative by General Services Admini-
stration guard.

B-214500 May 23, 1984 84-1 CPD 559
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY

Protest is dismissed where question of small
business bidder's responsibility is properly before
Small Business Administration for possible issuance
of certificate of competency.

B-214662 May 23, 1984 84-1 CPD 560
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest that awardee's bid was nonresponsive is dis-
missed as academic where the contract award and the
solicitation have been canceled.

B-214814 May 23, 1984 84-1 CPD 561
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest alleging that solicitation requirement is unduly
restrictive is untimely and not for consideration since

protest was not filed with our Office until after the closing date for receipt of proposals.

*B-214924 May 23, 1984 84-1 CPD 562
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--ADMINISTRATIVE
DETERMINATION--LABOR DEPARTMENT REVIEW*

GAO does not review whether an offeror is a regular dealer or manufacturer under the Walsh-Healey Act, since by law the matter is for the contracting agency's determination subject to final review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review an affirmative determination of responsibility unless the protester shows fraud or bad faith on the part of procurement officials or the solicitation contains definitive responsibility criteria that allegedly have not been applied.

*B-215051 May 23, 1984 84-1 CPD 563
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--INTERIM
APPEALS TO AGENCY-EFFECT ON 10 WORKING DAY GAO FILING PERIOD*

Protest filed with GAO more than 10 working days after the protester learns of initial adverse agency action on its earlier protest filed with the contracting agency is untimely and will not be considered on the merits.

*B-215052 May 23, 1984 84-1 CPD 564
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--STATE, ETC.
CERTIFICATIONS*

Whether bidders have legal capacity to perform under state law is a matter to be resolved between the state and the contractor.

B-215052 May 23, 1984 84-1 CPD 564 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties in a solicitation is dismissed as untimely when filed after bid opening because GAO Bid Protest Procedures require filing prior to bid opening.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER

Whether requirements are met during performance of contract is a matter of contract administration which GAO will not consider.

B-215134 May 23, 1984 84-1 CPD 565
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--STATE ETC.
CERTIFICATIONS

Where solicitation does not require bidder to have a specific license, allegation that successful bidder does not possess the necessary state operating authority to permit it to provide moving services required by the solicitation does not affect eligibility of bidder for award; rather, it raises a matter to be settled between the contractor and state authorities, not federal officials.

B-215150 May 23, 1984 84-1 CPD 566
CONTRACTS--SMALL BUSINESS CONCERN--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Protest concerning bidder's qualification as a small business concern is not for review by GAO since it is a matter for decision by Small Business Administration.

B-215161 May 23, 1984 84-1 CPD 567
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER

Where an option is exercisable at the discretion of the government, the decision whether to exercise the option is a matter of contract administration which GAO will not review under its bid protest functions.

B-215169 May 23, 1984 84-1 CPD 568
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED--STATE, ETC. LAW COMPLIANCE

Whether a contractor has complied with a state statute governing filing as a foreign corporation is a matter to be resolved between the firm and state authorities, and only in limited situations would it relate to the finding that the bidder is responsible which, in turn, GAO does not generally review.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties in an IFB apparent prior to bid opening must be filed before bid opening in order to be considered.

B-215176 May 23, 1984 84-1 CPD 569
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--
ADMINISTRATIVE DETERMINATION--LABOR DEPARTMENT REVIEW

GAO does not consider complaint that a firm is not a regular dealer or a manufacturer under the Walsh-Healey Public Contracts Act. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.

B-215234 May 23, 1984 84-1 CPD 570
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest of contracting officer's rejection of bid as nonresponsive is untimely when filed with GAO more than 10 working days after protester learned of bid rejection.

B-215110 May 24, 1984 84-1 CPD 571
BIDS--COMPETITIVE SYSTEMS--FOREIGN CONTRACTORS
Government is not required to equalize competitive advantages that foreign firms might have because

they are not subject to socio-economic requirements which domestic firms must meet.

BIDS--COMPETITIVE SYSTEM--RESTRICTIONS ON COMPETITION--PROHIBITION

Protest asserting that solicitation should be restrictively drawn is inappropriate for review under GAO's bid protest function, since the protest conflicts with the objective of that function, specifically, to insure the attainment of full and free competition.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Contracting agency, not GAO, is responsible for determining what product will satisfy the agency's minimum needs.

*B-213122, B-213122.2 May 25, 1984 84-1 CPD 573
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION CRITERIA--DELIVERY PROVISION*

A solicitation provision stating only a desired delivery date is not improper as long as any different delivery times offered in submitted proposals are within a "reasonable" time after the desired date.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS MINIMUM NEEDS--OVERSTATED

Protest that an agency solicitation for a check-processing system requiring offerors to submit single proposals for both checkwriting and checkinserting equipment was unduly restrictive of competition is sustained in part, where the solicitation effectively precluded the two major domestic checkinserting manufacturers from competing despite the apparent fact that those manufacturers could offer to satisfy the agency's need for assured compatibility of the system components if given the realistic opportunity to compete.

*B-213122, B-213122.2 May 25, 1984 84-1 CPD 573 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED*

A contracting agency may impose a restriction on the competition only if it can be shown that the restriction is deemed necessary to meet its actual minimum needs. Here, the agency met its prima facie burden of showing that its checkinserter speed requirement was a restriction reasonably related to its actual minimum needs, a showing not overcome by the protester's contrary assertion that the agency's monthly check-processing workload only demanded a substantially lesser speed.

*B-214093 May 25, 1984 84-1 CPD 575
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL V.
SPECIFIC--EFFECT ON RESPONSIBILITY*

Bid may not be rejected as nonresponsive because bidder did not have Federal Aviation Administration repair station certificate as required by solicitation, since requirement relates to bidder's responsibility and bidder should be given reasonable opportunity after bid opening to furnish evidence of required certification.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Allegation that solicitation requirement that contractor hold Federal Aviation Administration repair station certificate is unnecessary is untimely, since protest based on alleged solicitation impropriety must be filed before bid opening.

*B-215049 May 25, 1984 84-1 CPD 576
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DETERMINATION
NOT TO USE--SCOPE OF GAO REVIEW*

GAO will not review protest that government should procure services from particular firm on a sole-source basis.

BONDS--BID--REQUIREMENT--ADMINISTRATIVE DETERMINATION

Bid bond requirement is valid where performance bond is required and the services covered by the solicitation are essential to the operation of a government installation and to the well-being of its personnel.

BONDS--PERFORMANCE--ADMINISTRATIVE DETERMINATION TO REQUIRE--GOVERNMENT PROPERTY USE--MILITARY PROCUREMENT

Performance and payment bond requirements are a necessary and proper means of securing the contractor's fulfillment of its obligations where the contract requires the contractor to have use of government property and materials in a specified manner, and where the contractor's services are essential to the government installation.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--NONRESPONSIVE BIDDER

Firm is not an interested party under GAO's Bid Protest Procedures to protest a solicitation's pricing provisions where the firm admits it is precluded from submitting an offer because of bonding requirements held to be valid.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith by procurement officials or misapplication of definitive responsibility criteria.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSION

The requirement for meaningful discussions with all those in the competitive range does not mandate identical discussions with all offerors nor does

it obligate the procuring office to discuss every aspect of proposals receiving less than the maximum score. Contracting agencies are not supposed to notify offerors concerning the relative standing of their price proposals.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--PRICE CONSIDERATION--RELATIVE IMPORTANCE

Generally, when a request for proposals is silent concerning the relative weight of award factors, all factors are to be considered to have equal importance. Where, as here, however, cost is set off from all the other factors, some of which are relatively minor in importance, cost is considered to be of importance greater than that of the importance given to the other individual factors.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL PROTEST BASIS

New grounds of protest must independently satisfy the timeliness requirements of our Bid Protest Procedures. Where protester supplements its original timely protest with a new ground of protest more than 10 working days after the basis for it should have been known, the new ground is untimely and will not be considered on the merits.

*B-214915 May 29, 1984 84-1 CPD 579
BIDS--COMPETITIVE SYSTEM--GOVERNMENT OWNED EQUIPMENT, FACILITIES, ETC. USE--CONTRACTS TO OPERATE GOVERNMENT FACILITIES*

Regulation stating that contractors should furnish all facilities needed for the performance of government contracts applies to contracts normally performed with a contractor's own facilities and is not applicable to contracts for the operation of government facilities, which necessarily requires contractor use of government-owned facilities and equipment. Thus, the regulation does not prevent the government from contracting for the operation of a government-owned laundry and dry cleaning facility.

B-214915 May 29, 1984 84-1 CPD 579 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
GOCO V. COCO BASIS

Contention that a solicitation seeking bids to provide laundry and dry cleaning services in a government-owned/contractor-operated (GOCO) facility is unduly restrictive because it does not permit bids on a contractor-owned/contractor-operated basis will not be considered because the decision to have the services performed in a GOCO facility is a management/policy determination for the agency to make and is not reviewable under GAO's Bid Protest Procedures.

CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO REVIEW

GAO will not consider protest against small business size standard in solicitation, since Small Business Administration has the exclusive authority to resolve such matters.

B-215080 May 29, 1984 84-1 CPD 580
CONTRACTS--OPTIONS--SOLICITATION PROVISIONS--EVALUATION OF OPTIONS

Protester's interpretation of solicitation "Basis of Award" provision is not reasonable where it would preclude evaluation of solicited options by failing to give meaning to language which provides for such evaluation.

B-215240 May 29, 1984 84-1 CPD 581
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY EFFECT--INTERIM APPEALS TO AGENCY--EFFECT ON 10 WORKING DAY GAO FILING PERIOD

Protest filed with GAO more than 10 working days after protester receives notice that the same protest, initially filed with contracting agency, has been denied is untimely and will not be considered on the merits.

B-215281 May 29, 1984 84-1 CPD 582
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties in a solicitation is dismissed as untimely when filed after bid opening because GAO Bid Protest Procedures require filing prior to bid opening.

B-215282 May 29, 1984 84-1 CPD 583
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or misapplication of a definitive responsibility criteria, circumstances not present here.

B-212173 May 30, 1984 84-1 CPD 586
BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--ADEQUACY
DETERMINATIONS

The nature and extent of a preaward survey needed to assure the contracting officer that a firm will meet its contractual obligation are for the contracting officer's judgment and GAO therefore will not question the contracting officer's acceptance of a desk survey, as opposed to an on-site survey, where the protester has not shown that the contracting officer or the surveying agency acted fraudulently or in bad faith.

CONTRACTORS--RESPONSIBILITY--ADMINISTRATIVE DETERMINATION--
NONRESPONSIBILITY FINDING--WHAT CONSTITUTES

Contracting officer reasonable determined that protester was nonresponsible because it lacked the necessary financial strength to perform the contract where firm did not provide evidence of credit availability from a bank or Small Business Administration and its financial statements did not accurately reflect its financial condition.

*B-212173 May 30, 1984 84-1 CPD 586 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING*

Financial capability is one of the factors to be evaluated by the contracting officer in making a determination of a prospective contractor's responsibility and the specific financial qualifications to be considered in this determination are within the contracting officer's discretion and business judgment.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--TIME FOR MAKING
DETERMINATION*

A procuring agency is not required to delay award while an offeror attempts to cure the causes for the firm being found nonresponsible. Thus, where offeror fails to provide required information after having been given adequate time to do so, an agency may reasonably find the offeror nonresponsible.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that solicitation does not contain a performance bond requirement, filed after the closing date for receipt of proposals, is untimely since it involves an alleged impropriety apparent prior to the closing date and therefore must be filed prior to closing.

*B-212220.2 May 30, 1984 84-1 CPD 584
BIDS--EVALUATION--COSTS--NEW EQUIPMENT--DEPRECIATION
SCHEDULE*

Protest against adding new equipment costs to protester's bid based on a 10-year depreciation schedule for the equipment is denied where the protester has not shown that the agency's use of such a schedule was unreasonable. Use of 10-year depreciation reflects agency's policy determination to adopt the guidelines

of the Internal Revenue Service for depreciating laundry equipment in order to determine successful bidder.

BIDS--EVALUATION--ON BASIS OTHER THAN IN INVITATION--PROPRIETY

An agency may not evaluate bids in a manner that is inconsistent with the evaluation scheme set forth in the solicitation. To permit otherwise would be contrary to the legal requirement that all evaluation factors be made known in advance of bid opening so that all bidders can compete on an equal basis. Since the IFB did not provide for using projected new laundry equipment costs to evaluate the bid of a bidder who would perform the laundry service work at its own facility, it would not have been proper, as urged by the protester, for the agency to have evaluated such a bidder's bid on this basis.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

GAO will not question an agency's assessment of its needs unless the protester demonstrates that the determination is clearly unreasonable. GAO finds that the protester has failed to show that the agency's need for \$881,000 worth of new laundry equipment was unreasonable.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Post-bid-opening protest against agency's failure to specify in laundry service solicitation a value for the cost of replacing equipment at agency's laundry facility is untimely. Under GAO's Bid Protest Procedures, protests against apparent solicitation improprieties must be filed prior to bid opening. The solicitation clearly stated that the value of all the award evaluation factors would not be made available until bid opening.

B-215101 May 30, 1984 84-1 CPD 585

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

Apparent protest of agency determination that small business bidder is nonresponsible is dismissed since by law the Small Business Administration, to which the matter has been referred, conclusively determines the responsibility of small business bidders.

B-215158 May 31, 1984 84-1 CPD

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest that bidder will not perform in labor surplus area concerns a matter of responsibility which GAO will not review.

B-213329 June 1, 1984 84-1 CPD 588

*BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
INFORMATION--SMALL BUSINESS CONCERNS--END PRODUCT CONTRIBUTION*

IFB required bidder to establish its intention to furnish small business end products and to identify small business source to be used. Protester, small business bidder, complied with both requirements by promising to supply only small business end product and by expressly listing itself as source of end product. In view of bidder's firm commitment to small business requirements, bidder's contrary certifications in bid that it was a nonmanufacturer and a "regular dealer" of end product should have been waived as minor informalities. Distinguishes 59 Comp. Gen. 140.

*CONTRACTS--SMALL BUSINESS CONCERN--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Small business bidder's statement in labor surplus area provision of its bid that its supplier would incur manufacturing costs equal to 50 percent of bid does not necessarily contradict bidder's repre-

sentation that it is manufacturer since a small business may subcontract work even with a large business as long as small business contributes significantly to manufacture of end item. In any event, whether a concern is a small business manufacturer for a procurement is for the Small Business Administration, not the procuring agency, to decide.

*B-213872.2 June 1, 1984 84-1 CPD 589
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPLETION--
LACKING--EVALUATION OF PROPOSALS IMPROPER*

Offerors can compete on an equal basis only if they know in advance the basis on which their proposals will be evaluated. Agency reasonably concluded that award could not be properly made under an RFP which expressed a preference for proposals for lease of property with janitorial services and utilities included, but also invited proposals for lease of property without such services and utilities, and did not inform the offerors how proposals would be evaluated.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
REASONABLE BASIS--CHANGED CONDITIONS, NEEDS, ETC.*

Reasonable basis exists to cancel an RFP where the contracting agency discovers that its needs can be met through a less expensive approach than that reflected by the solicitation's evaluation criteria.

*B-214041.2 June 1, 1984 84-1 CPD 590
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed where request for reconsideration merely reflects the protester's disagreement with prior decision and does not provide evidence that prior decision was erroneous.

*B-212395.6 June 4, 1984 84-1 CPD 591
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed on reconsideration where protester has not shown any error of law or fact which would warrant reversal of the decision.

*B-213351 June 5, 1984 84-1 CPD 592
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--BEST
AND FINAL OFFERS*

Where contracting agency did not authorize the submission of oral offers, it properly refused to consider an oral best and final offer which was confirmed by a written proposal postmarked prior to but received after the closing date for receipt of best and final offers.

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
GOVERNMENT MISHANDLING DETERMINATION*

Contention that a mailed best and final offer may have been late due to government mishandling is without merit where the only documentary evidence of time of receipt of the offer indicates that the offer was received at the government installation after the closing date for receipt of offers.

*B-213645 June 5, 1984 84-1 CPD 593
CONTRACTS--AWARDS--NOTICE--TIMELINESS*

Notice of awards given to protester was prompt since given only 2 days after awards were made. In any event, even if notice had been untimely, circumstance would not have affected validity of awards.

*CONTRACTS--CONSTRUCTION--EXPIRED CONTRACT--"GRANDFATHER"
POLICY*

Protester contends that a "grandfather" policy--entitling protester to retain its employees once contracting agency let protester's contract expire--was a right created under its expired contract.

This question will not be considered because it does not affect the propriety of the protested awards but rather is concerned with a proper interpretation of protester's expired contract.

CONTRACTS--REQUESTS FOR QUOTATIONS--MULTIPLE QUOTING--PROPRIETY

Protester has not shown that multiple quoting practice allegedly permitted under request for quotations prejudiced government or other quoters.

GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965

The Service Contract Act places the responsibility for enforcing its provisions on the contracting agency head and the Secretary of Labor, not our Office.

B-213756 June 5, 1984 84-1 CPD 594

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest that a solicitation provision requiring offerors to furnish items from an approved source is improper will not be considered since the alleged defect was apparent from the face of the solicitation but the protest was not filed until after the closing date for receipt of proposals and therefore is untimely.

B-214299 June 5, 1984 84-1 CPD 595

CONTRACTS--NEGOTIATION--AWARDS--INITIAL PROPOSAL BASIS--PROPRIETY

Agency may award negotiated contract on the basis of initial proposals without discussions if adequate competition is obtained to ensure a fair and reasonable price and the RFP advises offerors of the possibility that award might be made without discussions.

B-214299 June 5, 1984 84-1 CPD 595 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION

Requests for verification of offer did not constitute discussions.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--CERTIFIED MAIL RULE

Untimely protest sent by certified mail 5 working days prior to final date for filing protest will be considered.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest alleging defect in RFP filed after the closing date for receipt of proposals is untimely under Bid Protest Procedures and will not be considered.

B-214330 June 5, 1984 84-1 CPD 596
BIDS--LATE--TIME OF RECEIPT DETERMINATION--EVIDENCE TO
ESTABLISH

Where protester alleges that procuring agency lacked sufficient evidence to accept late bid that was mailed 5 days prior to bid opening based on the fact the agency no longer has the original bid wrapper, protest is denied because postmark on the subsequently submitted original postal receipt was acceptable evidence under the solicitation's late bid clause.

B-214449 June 5, 1984 84-1 CPD 597
BIDS--MISTAKES--CORRECTION--INTENDED BID PRICE--ESTABLISHED
IN BID

Agency acted reasonably in permitting a bidder to correct an error in its total bid price, which failed to reflect an offered discount, even though the corrected bid displaced another bid, since the mistake and the intended bid price were substantially ascertainable from the invitation and the bid itself.

*B-214735 June 5, 1984 84-1 CPD 598
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest against specifications is dismissed as academic where solicitation containing the specifications is canceled.

*B-214952 June 5, 1984 84-1 CPD 599
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Whether a bidder is reputable concerns the firm's responsibility, and GAO will not review a determination that a firm is responsible except in limited circumstances.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest of alleged deficiencies in a Department of Energy operating contractor's solicitation is untimely where filed after the closing date for receipt of proposals.

GENERAL ACCOUNTING OFFICE--JURISDICTION--PATENT INFRINGEMENT

GAO does not consider allegations of possible patent infringements.

*B-215136 June 5, 1984 84-1 CPD 600
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility except in limited circumstances not present here.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Whether a contractor performs in accordance with all the terms and conditions of the contract is a

matter of contract administration, which is the responsibility of the contracting agency, not GAO.

B-215157 June 5, 1984 84-1 CPD 601

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest regarding the acceptability of the awardee's product is dismissed as untimely where the awardee's product was identified in the solicitation as acceptable but the protest to GAO was not filed until more than 4 months after the closing date for receipt of proposals.

B-215160 June 5, 1984 84-1 CPD 602

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest not received in our Office within 10 working days after the protester knew or should have known of the basis of its protest is untimely and will not be considered.

B-215236 June 5, 1984 84-1 CPD 603

*BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS
SUBMITTED AT BID OPENING*

Responsiveness must be determined from material available at bid opening and postposing explanations cannot be considered to correct a nonresponsive bid.

*BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
SMALL BUSINESS REQUIREMENTS*

Bid received on total small business set-aside solicitation which indicates bidder would not furnish products manufactured or produced by small business concerns was properly rejected as nonresponsive.

*B-213556 June 6, 1984 84-1 CPD 604
CONTRACTORS--RESPONSIBILITY--ADMINISTRATIVE DETERMINATION--
NONRESPONSIBILITY FINDING--SUPPORTED BY RECORD*

Where a solicitation contains special standards of responsibility, including a 2-year experience requirement for certain workers, an offeror's failure to demonstrate its ability to satisfy the criteria is a proper basis for its rejection as nonresponsible.

*B-213726 June 6, 1984 84-1 CPD 605
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY UNEQUAL PROPOSALS--PRICE DETERMINATIVE FACTOR*

Protest is sustained where agency has not justified award to higher priced, technically superior offeror whose price is \$4 million more than a technically acceptable offeror whose technical score was only slightly lower than awardee's. Even where cost is stated in the evaluation criteria to be of less importance than technical factors, cost must still be accorded some consideration, and record here does not indicate cost was properly considered.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--COMPUTATION OF TIMELINESS--FEDERAL
HOLIDAY*

A federal holiday is not considered a working day for computing timeliness under our Bid Protest Procedures. Therefore, a protest allegedly filed untimely on the 11th working day, where our procedures require filing of a protest within 10 working days, is not untimely where one of the days in question is a federal holiday.

*B-211464 June 7, 1984 84-1 CPD 606
CONTRACTS--MODIFICATION--SCOPE OF CONTRACT REQUIREMENT*

Modification of existing requirements contract that (1) increased the period for ordering new word processing and related equipment from 3 to 6 years; (2) made substantial changes to the types

of equipment that could be ordered, and (3) altered the contract by greatly expanding the facilities for which equipment could be ordered under it and by altering the prices that would be incurred, amounted to a new procurement that should have been competed unless the agency's needs could only be met by the incumbent.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--STANDARDIZATION, INTERCHANGEABILITY, ETC.

Civilian agency's decision to standardize word processing and related equipment around incumbent's products, which restricted follow-on contract to that firm, is improper where the record does not establish that standardization was required by any unusual or abnormal agency-wide condition or situation, as envisioned by statutory provision authorizing standardization.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--FOR APPLICATION

Agency's use of standardization policy to justify continued sole-source acquisition of incumbent's word processing and related equipment raises significant issue which GAO will consider regardless of timeliness of protest.

B-214408.2 June 8, 1984 84-1 CPD 608

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Assuming that a protest concerning an alleged impropriety apparent in an invitation for bids was timely filed with the agency before bid opening, a subsequent protest to GAO filed more than 10 days after both the opening of bids and receipt by the protester's attorney of a copy of the agency's formal denial of the protest is untimely.

*B-214778.3, B-214778.4 June 8, 1984 84-1 CPD 609
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPAREN'
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest made after the closing date for the receipt of best and final offers that solicitation of best and final offers was improper is untimely.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest that awardee was given unfair advantage in negotiations is rendered moot by cancellation of solicitation.

*B-215243 June 8, 1984 84-1 CPD 610
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Whether vehicles delivered to the government conform to contract description is a matter of contract administration, which is the responsibility of the procuring agency.

*B-212557 June 11, 1984 84-1 CPD 611
CONTRACTS--NEGOTIATION--PUBLIC EXIGENCY--COMPETITION
SUFFICIENCY*

Immediate rejection of protester's proposal and award to remaining, acceptable offeror was justified where procurement was conducted on an expedited basis to meet an urgent need and protester stated unequivocally during oral discussions that it could not meet mandatory delivery schedule. Fact that award was completed within minutes does not demonstrate that protester, who later attempted to change his position regarding delivery, was treated unfairly.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

Allegation that agency's actions were dictated by bias is without merit as improper motives are not attributed on the basis of inference or supposi-

tion, agency's actions were consistent with its need to act expeditiously to meet an urgent requirement, and there is no evidence to support alleged bias.

B-213355 June 11, 1984 84-1 CPD 613

CONTRACTS--NEGOTIATION--CONFLICT OF INTEREST PROHIBITIONS--STATUS OF OFFEROR

Protest that awardee had conflict of interest because a former employee of awardee drafted specifications is denied where record shows that former employee had only peripheral involvement in procurement working for another firm that served as a consultant to government and that only tie between former employee and awardee during time of procurement was past employment.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest of specifications either filed with agency prior to closing date for receipt of initial proposals and not filed with GAO within 10 working days of initial adverse agency action or filed initially with GAO after closing date for receipt of initial proposals is untimely.

B-214063 June 11, 1984 84-1 CPD 615

BIDS--MISTAKES--CORRECTION--DENIAL--ACCEPTANCE OF CONTRACT AT INITIAL BID PRICE

Contracting officer has no obligation to query the bidder as to its willingness to accept an award at the original bid price where the bidder only requested correction of the bid prior to award.

BIDS--MISTAKES--INTENDED BID PRICE UNCERTAINTY--CORRECTION INCONSISTENT WITH COMPETITIVE BIDDING SYSTEM

Bidder seeking correction of a bid is not permitted to recalculate and change the bid--based on an alleged industry standard of which the agency is unaware--to include factors that were omitted when the bid was prepared and submitted.

B-214705 June 11, 1984 84-1 CPD 616
CONTRACTS--LABOR SURPLUS AREAS--DESIGNATION--DEPARTMENT
OF LABOR

A firm is not an eligible Labor Surplus Area (LSA) concern where its proposed manufacturing location is not listed as an LSA by the Department of Labor.

B-215274 June 11, 1984 84-1 CPD 617
BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE

Where a telegraphic modification erroneously increased bid by \$449,668, rather than by \$49,668, as allegedly intended, and the intended increase may only be ascertained by recourse to a second telegram, delivered after bid opening, correction which would displace other bidders may not be permitted.

BIDS--MISTAKES--CORRECTION--LOW BID DISPLACEMENT

Correction of a bid mistake which would result in displacement of other bidders may be effected only where the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid, without resort to other outside documentation.

REPORTS--ADMINISTRATIVE--CONTRACT PROTEST--REPORT NOT REQUESTED
BY GAO--PROTEST PATENTLY WITHOUT LEGAL MERIT

Protest is denied without obtaining report from agency since, even if all of the protester's allegations are considered to be correct, there would still be no legal basis for providing the relief requested.

B-215296 June 11, 1984 84-1 CPD 618
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest challenging allegedly restrictive specification in request for proposals will not be considered where the protest was filed after the closing date for receipt of proposals contrary to GAO Bid Protest Procedures.

B-215386 June 11, 1984 84-1 CPD 619
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
REJECTION PROPRIETY--PROPOSAL SENT BY NON-CERTIFIED MAIL

Late proposal sent by regular mail 3 days prior to the due date was properly rejected since proposal was not sent by registered or certified mail and the lateness was not due to government mishandling.

B-213323 June 12, 1984 84-1 CPD 620
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Ten-year warranty requirement for boilers is not unreasonable where the record shows that the agency has a legitimate basis for requiring such a warranty.

B-213667 June 12, 1984 84-1 CPD 621
BIDDERS--QUALIFICATIONS--FAILURE TO SUBMIT INFORMATION BEFORE
BID OPENING--RESPONSIBILITY OF BIDDER V. RESPONSIVENESS OF BID

Requirement in solicitation set aside for minority business participation that bidder submit with its bid certification from an agency of the District of Columbia Government that bidder is a minority business enterprise pertains to the bidder's eligibility to bid. Therefore, GAO finds that the fact that the bidder is certified at bid opening excuses the bidder's failure to provide evidence of the certification with its bid.

GAO finds that solicitation requirement for listing of minority subcontractors related to the bidder's responsibility and need not have been completed prior to bid opening.

BIDDERS--QUALIFICATIONS--INFORMATION--TIME FOR SUBMISSION

GAO finds no merit in protester's argument that it could have submitted more information under solicitation category of minority and apprenticeship hiring record if the protester had known that it was not limited to joint venture as opposed to separate firm business records. Solicitation did not limit the type of bid information that a

joint venture bidder could submit. Nevertheless, GAO questions whether the protester should not have been permitted to submit further information after bid opening since such information would only reflect the protester's hiring record up to the time of opening. However, GAO sees no reason to disturb evaluation in view of the fact that failure to have any further hiring information considered was caused by the protester's erroneous interpretation of solicitation requirements.

BIDS--EVALUATION--ON BASIS OTHER THAN IN INVITATION--PROPRIETY

Procurement officials do not have the discretion to announce in the solicitation that one evaluation plan will be used and then follow another in the actual evaluation. Nevertheless, GAO finds no prejudice to the bidders resulting from awarding some points in the actual evaluation of bids under a solicitation's evaluation factor. Regardless of whether the bidders should have been given any points unless all of the evaluation factor's subcriteria were met, the information that had to be submitted on the evaluation factor remained the same.

CONTRACTS--AWARDS--LOW BIDDER--ENTITLEMENT TO AWARD--AWARD ON PRICE AND "OTHER FACTORS CONSIDERED" BASIS

GAO finds that it was improper for the District of Columbia to use noncost factors to determine award in a formally advertised procurement that was not set aside for minority business participation. Like federal procurements, District of Columbia awards are to be made to that responsible bidder whose bid conforming to the invitation for bids will be most advantageous, price and other factors considered. The other factors are objectively determinable elements of cost identified in the solicitation as factors to be evaluated in the selection of a contractor.

JOINT VENTURE--QUALIFICATIONS--IMPUTED FROM ONE VENTURER TO THE JOINT VENTURE

A Joint venture is generally an association of legal entities to carry out a single business enterprise. Unless the terms of a joint venture agreement provide

that one of the entities no longer exists, separate qualifications of each of the legal entities in the joint venture properly can be considered in evaluating the qualifications of the joint venture.

B-213798 June 12, 1984 84-1 CPD 622

CONTRACTS--GRANT-FUNDED PROCUREMENTS--BIDS--RESPONSIVENESS--ADMINISTRATIVE DETERMINATION

Grantee's decision to reject low bid under advertised solicitation because equipment offered did not satisfy requirement for construction with specified noncorrosive materials was proper in the absence of a solicitation provision of alternative materials to those specified.

B-215375 June 12, 1984 84-1 CPD 623

CONTRACTS--PROTESTS--ADMINISTRATIVE ACTIONS--OUTSIDE SCOPE OF PROTEST PROCEDURE

Protest that the government should sell federal property, taken through government condemnation proceeding, to former owner of property, rather than sell property by public sale, is dismissed. Since protester has not alleged or shown that proposed sale is in violation of any government procurement statute or regulation, complaint is not proper subject of bid protest.

B-215418 June 12, 1984 84-1 CPD 624

CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--TENNESSEE VALLEY AUTHORITY PROCUREMENTS

GAO will not review Tennessee Valley Authority (TVA) procurement because GAO is precluded by TVA Act for disallowing credit for expenditures which TVA Board determines necessary in carrying out TVA Act.

B-215456 June 12, 1984 84-1 CPD 625

CONTRACTS--OPTIONS--NOT TO BE EXERCISED--CONTRACT ADMINISTRATION MATTER--NOT FOR GAO RESOLUTION

Protest that agency should have exercised option to extend contract is dismissed because where an option is exercisable at the discretion of the government the decision not to do so is a matter of contract administration not for review by GAO.

B-213790 June 13, 1984 84-1 CPD 626
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Complaint that awardee's approach to contract performance will violate applicable professional canons of ethics is a matter for the professional organizations involved, not GAO.

GENERAL ACCOUNTING OFFICE--JURISDICTION--STATE LAW
APPLICABILITY--NO AUTHORITY TO DETERMINE

Protest that awardee's approach to contract performance--debt collection services--will constitute the unauthorized practice of law in most states is denied. The basic responsibility for defining, controlling and regulating the practice of law in any jurisdiction rests with the courts of that jurisdiction, not GAO.

B-214798 June 13, 1984 84-1 CPD 627
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Subcontractor protest alleging agency improperly controlled subcontractor selection is untimely where protest was not filed within 10 working days after basis of protest was known.

B-210740.2 June 14, 1984 84-2 CPD
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision sustaining a General Services Administration finding that a carrier has overcharged the government is affirmed where the carrier's request for reconsideration fails to demonstrate that errors of fact or of law exist in that decision which warrant its reversal or modification.

B-213894 June 14, 1984 84-1 CPD 628
BIDS--MISTAKES--CORRECTION--PREJUDICIAL TO OTHER BIDDERS

Where IFB for three construction projects provided that three contracts, one for each project, would be awarded,

agency properly refused correction of alleged mistake of bidder whose combined prices for all three projects was low but who had failed to comply with IFB instructions for allocating certain costs among the projects, because correction of the error would displace another bidder otherwise in line for award of two of the projects and the mistake and intended bid were not ascertainable from the bid documents but only from the protester's post-bid opening explanation and worksheets.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Where a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening is not filed until after opening, the protest is untimely under GAO Bid Protest Procedures, 4 C.F.R. 21.2(b)(1), and will not be considered on the merits.

B-214354 June 14, 1984 84-1 CPD 629

*BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
STANDARD REPRESENTATIONS AND CERTIFICATIONS--WAIVER--AS
MINOR INFORMALITY*

A bidder's failure to complete representations contained in Standard Form 33, including the small business size status representation, is a minor informality which the bidder must be given an opportunity to correct.

B-203652.2, B-203652.3 June 18, 1984 84-1 CPD 630

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Rational basis is lacking for rejection of proposal without conducting discussion where record shows that the evaluators misconstrued and ignored applicable performance criteria in evaluating proposals, did not evaluate proposals on a common basis, disregarded features of protester's proposal and misread and unilaterally adjusted data contained in the proposals.

*B-203652.2, B-203652.3 June 18, 1984 84-1 CPD 630 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW*

While GAO defers to the procuring agency's opinion in matters of judgment, technical facts are reviewed when necessary to determine whether the agency acted reasonably in discharging its legal obligations.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
IN CAMERA INSPECTION OF RECORDS, ETC.*

Although protester bears the burden of proving its case, that burden is met if its protest is supported by an in camera inspection of records which the agency has refused to disclose to the protester.

*B-212304, B-212304.3 June 18, 1984 84-1 CPD 631
BIDS--RESPONSIVENESS--RESPONSIVENESS V. BIDDER RESPONSIBILITY*

Solicitation requirement that bidder certify--in its bid--that product offered has been in satisfactory and efficient operation at listed installations is directed to performance history of product and thus involves bid responsiveness, even though included in a clause that also requires information pertaining to the bidder's responsibility. Since responsiveness must be determined at opening, a bid which did not include the certification must be rejected as nonresponsive, even if required information is submitted after opening.

*CONTRACTS--PROTESTS--AWARD APPROVED--PRIOR TO RESOLUTION OF
PROTEST*

Agency's failure to follow regulations concerning award notwithstanding a bid protest, failure to notify protester of award, and delay in submitting a complete administrative report are all procedural deficiencies that do not invalidate an otherwise proper award.

*B-212304, B-212304.3 June 18, 1984 84-1 CPD 631 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that amendment to invitation for bids unduly restricted competition is untimely when filed after bid opening, since GAO Bid Protest Procedures require protests based upon alleged solicitation defects which were apparent before bid opening to be filed by that time.

*B-212385.4, B-212385.5 June 18, 1984 84-1 CPD 632
BIDS--MULTI-YEAR--ALTERNATE BASIS*

Under a multi-year procurement which solicited alternate bids for supply of single year quantity and multi-year quantity of antennas, bidder only is entitled to an award for the single year quantity when the agency determines that no cost advantage will result if the multi-year quantity is awarded.

BIDS--MULTI-YEAR--EVALUATION--MULTI-YEAR V. SINGLE YEAR AWARD

Agency's decision to award contract on a sole-source basis is justified where the agency has adequately demonstrated that its needs are urgent and only the awardee can meet those needs within the required time-frame because the proposed awardee is the only firm that qualifies for a waiver of first article testing.

BIDS--TRANSFERS--PROPRIETY

A business entity which after bid opening becomes wholly owned by another firm is not eligible to receive a contract award where the circumstances lead to the conclusion that the transaction was tantamount to the sale of a bid. Reverses B-212385, et al. Jan. 30, 1984

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ISSUES IN LITIGATION*

Agency's untimely request for reconsideration and protester's untimely protest will be considered on

merits where the United States Claims Court has requested a decision from GAO. Reverses B-212385, et al. Jan. 30, 1984.

*B-212937.2 June 18, 1984 84-1 CPD 633
CONTRACTORS--RESPONSIBILITY--DETERMINATION--FACTORS FOR
CONSIDERATION--BANKRUPTCY PROCEEDINGS*

A firm need not be found nonresponsible merely because it is undergoing bankruptcy proceedings.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review an affirmative determination of responsibility in the absence of either a showing of possible fraud or of the misapplication of definitive responsibility criteria.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW*

Agency determination involving technical matters will be questioned only upon a clear showing of unreasonableness.

*CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--ADMINISTRATIVE
DETERMINATION--REASONABLE BASIS*

Where a sole-source negotiated procurement is justified as promoting standardization and interchangeability of parts with equipment already in the agency's inventory, GAO will not consider protester's allegations that a competitive procurement would have enabled the government to purchase more advanced, but less expensive, equipment, the parts of which would not be interchangeable with existing equipment.

*CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DETERMINATION AND
FINDINGS--DEFECTIVE--AWARD PROPRIETY*

Even if the determination and findings authorizing sole-source negotiation are defective, the resulting award is not improper if the circumstances surrounding the procurement justified a sole-source award.

B-212937.2 June 18, 1984 84-1 CPD 633 - Con.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--STANDARDIZATION, INTERCHANGEABILITY, ETC.

Sole-source procurement of military tractors for use under combat conditions may be justified on the grounds of standardization and interchangeability of parts with tractors already in the agency's inventory even though the units to be purchased, while substantially similar to, are not absolutely identical with those already in the inventory. There is a significant difference between no standardization at all and standardization to the extent possible.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest to GAO filed within 10 working days of initial adverse agency action on prior protest to the agency is timely.

CONTRACTS--RATIFICATION--UNAUTHORIZED CONTRACTS--VALIDITY OF RATIFICATION

Express ratification of an allegedly unauthorized letter contract under which the government receives a benefit renders payment under the contract proper.

B-213303 June 18, 1984 84-1 CPD 634

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--EVALUATORS--QUALIFICATIONS

A challenge to the qualifications of the person who evaluated quotations will not be considered by GAO absent allegations of fraud, bad faith or conflict of interest.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest not received in GAO within 10 working days after protester knew or should have known of the basis of its protest is untimely.

*B-213303 June 18, 1984 84-1 CPD 634 - Con.
PURCHASES--SMALL--AWARDS--BEST ADVANTAGE TO GOVERNMENT
REQUIREMENT--PRICE AND OTHER FACTORS CONSIDERED--ACCEPTANCE
OF OTHER THAN LOWEST QUOTATION*

In a procurement of parking lot lighting fixtures pursuant to small purchase procedures, the agency did not deprive quoters of a fair and equitable competition by selecting from comparable fixtures one which was not the least expensive but whose features were determined to be most advantageous to the government.

*B-213595.2 June 18, 1984 84-1 CPD 635
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed where reconsideration request does not show any error in fact or law of prior decision.

*B-214031 June 18, 1984 84-1 CPD 636
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED*

Procuring activity's rejection of protester's bid conditioned on the use of government property already in its possession under another contract was proper where protester failed to submit with bid written authorization to use such property and other data as required by the solicitation.

*BIDS--RESPONSIVENESS--OFFER OF COMPLIANCE AFTER BID OPENING--
ACCEPTANCE NOT AUTHORIZED*

A bid that is properly declared nonresponsive due to bidder's failure to submit required written authorization for use of government property in bidder's possession under another contract may not be made responsive through bidder's post-bid opening explanation.

*B-214032 June 18, 1984 84-1 CPD 637
CONTRACTS-- MODIFICATION--PROPRIETY*

Agency's decision to modify awardee's contract to cover increased requirements is proper where the

agency determined that the modification was necessary to fulfill requirements until a new procurement could be issued.

B-214032 June 18, 1984 84-1 CPD 637

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

GAO will not object to the technical evaluation of protester's proposal where evaluation was reasonable and in accordance with the evaluation criteria.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL SUPERIORITY V. COST*

In a negotiated procurement, award may be made to a higher priced, higher technically rated offeror as long as the decision to do so is reasonable and in accordance with the stated evaluation criteria.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester's allegation that awardee had an unfair competitive advantage is dismissed because the protester has failed to meet its burden of affirmatively proving this allegation.

B-214287 June 18, 1984 84-1 CPD 638

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Decision holding that agency determinations to
(1) award negotiated contract after discussions;
(2) expedite contract award process to take advantage of alternate low offer with 30-day acceptance limit; and (3) refuse to accept late offer that would have displaced previous low offeror were proper is affirmed where protester has not shown that there was an error of law or fact in the decision.

B-211406.2 June 19, 1984 84-1 CPD 639
GENERAL ACCOUNTING OFFICE--RECOMMENDATIONS--CONTRACTS--
TERMINATION--ERRONEOUS AWARD--REEVALUATION OF OTHER OFFERS

GAO recommends, based on new information showing that contract performance is continuing beyond anticipated completion date in record in original protest, that agency consider feasibility of termination of sole-source contract and expedited recompetition given our prior sustaining of the protest.

B-213401.2 June 19, 1984 84-1 CPD 640
BIDS--PREPARATION--COSTS--RECOVERY

Bid preparation costs may be recovered if the contracting officer's actions were unreasonable or contrary to law or regulation, and precluded the claimant from receiving an award, so that the fact that the contracting officer's actions were taken in good faith is not determinative of the right to reimbursement. Distinguishes B-189045, Jan. 26, 1979.

CONTRACTS--PROFITS--ANTICIPATED

There is no legal basis to pay anticipated profits to an unsuccessful bidder.

GENERAL ACCOUNTING OFFICE--RECOMMENDATIONS--CONTRACTS--PRIOR
RECOMMENDATIONS--WITHDRAWN--NOT IN BEST INTEREST OF
GOVERNMENT

GAO withdraws its prior recommendation that an existing contract be terminated for the convenience of the government and a new award made to the successful protester since the contracting agency has established that termination would not be in the government's best interest because of prohibitive attendant costs and additional delays affecting project completion.

B-214582.2 June 19, 1984 84-1 CPD 641
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--ORAL--OFFER AND
ACCEPTANCE

Since a valid offer must contain or make reference to price, quantity, quality, and delivery

terms and clearly demonstrate the offeror's intent to be bound contractually, a protester's contention that it substantially complied with a requirement to submit a proposal for a multiple-award schedule contract is denied where it appears that pre-closing date communications with the contracting officer were merely preliminary discussions concerning items to be included on the schedule contract and the protester's intent in acknowledging a solicitation amendment is unclear.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

The fact that the protester's product may be unique does not entitle the protester to an award of a Federal Supply Schedule contract or mean that the provisions of a solicitation regarding the timely submission of proposals should be waived.

B-214842 June 19, 1984 84-1 CPD 642

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest of rejection of bid is untimely where not filed with GAO within 10 working days after protester learns of rejection of bid and basis for rejection.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest of an allegedly restrictive solicitation provision is untimely where not filed until after bid opening.

B-214864 June 19, 1984 84-1 CPD 643

ADVERTISING--COMMERCE BUSINESS DAILY--FAILURE TO SYNOPSISIZE PROCUREMENT

Contracting agency's failure to publish a synopsis in the Commerce Business Daily concerning its proposed purchase of communications equipment under a multiple-award schedule as required by statute did not prejudice the protester because the protester had actual knowledge of the proposed purchase and had an opportunity to compete.

*B-214864 June 19, 1984 84-1 CPD 643 - Con.
CONTRACTS--FEDERAL SUPPLY SCHEDULE--MULTIPLE SUPPLIERS--
PROCEDURAL DEFICIENCIES--NO PREJUDICE*

GAO sees no value in recommending that the agency conduct a new purchase, despite the deficiency detected, since the protester engaged in a head-to-head competition with the awardee and the agency concluded that only the awardee's equipment could meet its technical requirements.

*CONTRACTS--FEDERAL SUPPLY SCHEDULE--SPECIFICATIONS--MINIMUM
NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION*

The protester has failed to show that the agency's justification for purchasing from the higher priced supplier is clearly unreasonable where the protester's arguments only reflect a disagreement with the agency's technical judgment.

*CONTRACTS--FEDERAL SUPPLY SCHEDULE--TO OTHER THAN THE LOW BIDDER
OR OFFEROR--JUSTIFICATION*

In determining whether the contracting agency's justification for purchasing from a higher priced, multiple-award schedule supplier is adequate, the important factor is not when the agency put its reasons into writing, but whether those reasons existed at the time the agency made its decision and whether they do in fact support that decision.

Whether the protester is a lower priced supplier of the required equipment is irrelevant where the agency has adequately justified a purchase from a higher priced supplier on technical grounds.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

Protester has not shown that the agency acted in bad faith when it selected a competitor for the award; to prove bad faith, the protester must present virtually irrefutable evidence that agency officials acted with a specific and malicious intent to injure the protester.

B-215291 June 19, 1984 84-1 CPD 644
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

No basis exists to preclude a contract award merely because bidders submitted below-cost bids. A below-cost bid presents a question of the bidder's responsibility and GAO does not review affirmative determinations of responsibility except in limited circumstances.

B-215330 June 19, 1984 84-1 CPD 645
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest against alleged defect in solicitation filed after closing date for receipt of proposals is untimely.

B-215353 June 19, 1984 84-1 CPD 646
CONTRACTS--OPTIONS--NOT TO BE EXERCISED--CONTRACT
ADMINISTRATION MATTER--NOT FOR GAO RESOLUTION

Where the government possesses the discretion to exercise an option, its decision whether or not to exercise that option is a matter of contract administration which GAO will not review under its bid protest functions.

B-215478 June 19, 1984 84-1 CPD 647
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest regarding the acceptability of the awardee's product is dismissed as untimely where the awardee's product was identified in the solicitation as acceptable but the protest to GAO was not filed until after the closing date for receipt of proposals.

B-215481 June 19, 1984 84-1 CPD 648
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest based on alleged improprieties on the face of a solicitation is untimely and will not be consi-

dered on the merits where not filed with GAO or the contracting agency prior to bid opening.

*B-212575.2 June 20, 1984 84-1 CPD 649
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATION DOCUMENTS--EXAMINATION BY GAO*

In camera review of proposals and evaluation material shows reasonable basis for scoring of awardee's proposal 17 percent higher than the protester's for technical merit. Since the solicitation stated the agency would make award based on a predetermined formula numerically weighting price in relation to technical merit, the agency properly followed the formula in making the award notwithstanding that the awardee's proposal was more costly.

*B-212575.2 June 20, 1984 84-1 CPD 649
CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED*

GAO will not attribute bias to procurement officials on the basis of inference or supposition; the protester must submit virtually irrefutable proof that the officials had a specific and malicious intent to harm the protester.

*B-214440 June 20, 1984 84-1 CPD 650
CONTRACTS--PROTESTS--ISSUES IN LITIGATION*

GAO will not consider a protest where the material issues are before a court of competent jurisdiction which has not expressed an interest in receiving GAO's decision.

*B-215295 June 20, 1984 84-1 CPD 651
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO*

Selection of contractor for award under section 8(a) of the Small Business Act is within the discretion of the contracting agency and the Small Business Administration (SBA) and will not be questioned absent a showing of fraud or bad faith on the part of government officials or allegations that SBA regulations have been violated.

B-215388 June 20, 1984 84-1 CPD 652
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging that specifications are unduly restrictive is dismissed since it was not filed before bid opening.

CONTRACTS--PROTESTS--WHAT CONSTITUTE PROTEST

Where protester's letter to agency expressing dissatisfaction with specifications indicates an intent to protest in the future if concerns are not satisfactorily resolved, letter and agency response that letter cannot be used to fix the date of protest for timeliness purposes since time for fixing date of protest is when protest is made.

B-215407 June 20, 1984 84-1 CPD 653
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

When protest is filed initially with contracting agency, subsequent protest filed with GAO more than 10 working days after protester learns of initial adverse agency action on protest is untimely.

B-215411 June 20, 1984 84-1 CPD 654
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against solicitation improprieties which was not filed prior to bid opening either with the agency or GAO is untimely filed under GAO Bid Protest Procedures, 4 C.F.R. 21.2(b)(1) (1983).

B-215508 June 20, 1984 84-1 CPD 655
FOREIGN AID PROGRAMS--LOAN PROGRAMS--PROCUREMENTS USING BORROW
FUNDS--NOT SUBJECT TO GAO REVIEW

Procurement by the Dominican Republic, using funds borrowed from Agency for International Development, is neither federal procurement nor procurement involving federal grant funds and is not, therefore, subject to review by GAO.

*B-215035. June 21, 1984 84-1 CPD 656
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

Protester's bid may not be rejected for offering what the agency believes to be an unusually low price for one of the line items, since, as a general rule, below-cost bids do not constitute a legal basis for precluding a contract award and the protester has argued in some detail that the agency's estimate on the cost of the work is overstated.

BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY UNBALANCED BIDS"--MATERIALITY OF UNBALANCE

Even if it is assumed that the protester's bid is mathematically unbalanced, GAO concludes that the bid is not materially unbalanced since it will apparently result in the lowest ultimate cost to the government.

BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY UNBALANCED BIDS"--WHAT CONSTITUTES

Protester's bid is not mathematically unbalanced since its equipment costs are properly allocable to the base period. B-206449.2, December 20, 1982, and B-208795.2, B-209311, April 22, 1983, distinguished.

*B-215217 June 21, 1984 84-1 CPD 657
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest is dismissed as untimely where it was not filed until nearly 18 months after the protester knew or should have known of the basis for its protest.

*B-213661 June 22, 1984 84-1 CPD 658
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE DETERMINATION--IMPROPER*

Elimination of a proposal from the competitive range, thereby leaving a competitive range of one,

is improper where record shows that informational deficiencies in the proposal were not so material that major revisions and additions to the proposal would have been required to make it acceptable.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--RECOVERY*

Proposal preparation cost may be covered where:

(1) the agency's rejection of the proposal was unreasonable, and thus arbitrary and capricious; and
(2) the offeror should have been determined by the agency to be in the competitive range with a reasonable chance at the award, but the agency's arbitrary action makes it impossible to determine precisely how substantial that chance was.

B-213663 June 22, 1984 84-1 CPD 659

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Where protester initially corresponds with agency requesting information under Freedom of Information Act (FOIA) "in an effort to avert a formal protest" and subsequently files a formal protest, the later date is used to apply the timeliness requirements of GAO Bid Protest Procedures.

Belief by protester that it requires additional information under FOIA to file protest which GAO finds unnecessary will not toll timeliness requirements.

*FREEDOM OF INFORMATION ACT--GENERAL ACCOUNTING OFFICE
AUTHORITY*

FOIA provides no authority for GAO to determine when or what information must be disclosed by government agencies.

*B-213939 June 22, 1984 84-1 CPD 660
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

Protest contending that bid was erroneously rejected as nonresponsive is academic since the protester was not the low bidder and thus would not be in line for award even if its protest were sustained.

*B-213227.2 June 25, 1984 84-1 CPD 661
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS*

Meaningful discussions were held where contracting agency identified those areas in protester's proposal which it considered deficient and gave protester the opportunity to correct those deficiencies. Context and extent of discussions are matters primarily for determination by the contracting agency. All that is required is that the agency lead offerors into areas of their proposals which require amplification.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--CHANGED*

Allegation that agency changed specifications in evaluating equipment proposed by protester is denied. Record indicates that agency evaluation was in conformance with specifications and mere fact that the protester disagrees with agency conclusions provides no basis to find that it was not done in accordance with the provisions of the RFP.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

Allegation that agency evaluation of protester's response to sample task requirement of RFP was arbitrary and capricious is denied where reasonable basis exists for evaluation.

B-213227.2 June 25, 1984 84-1 CPD 661 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
SAFETY RECORD

Allegation that awardee's proposal should have been downgraded because of poor safety record is denied where agency had sufficient basis to conclude that awardee's safety record was excellent.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW

It is not the function of GAO to rescore technical proposals. Mere disagreement by protester concerning the scoring of its proposal does not establish that the evaluation had no reasonable basis.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DEBRIEFING CONFERENCES--ISSUES PROVIDING
PROTEST BASIS

Where protester first learns of specific grounds of protest concerning the evaluation of its proposal at agency debriefing, protest was not required to be filed prior to debriefing.

B-213473 June 25, 1984 84-1 CPD 602
BIDS--EVALUATION--TECHNICAL ADEQUACY--ADMINISTRATIVE
DETERMINATION

An agency's technical evaluation of a bid will not be disturbed where it is not shown to be unreasonable, arbitrary, nor violative of procurement laws and regulations.

BIDS--PREPARATION--COSTS--NONCOMPENSABLE--NONRESPONSIVE BID

A bidder is not entitled to recovery of bid preparation costs where its bid was properly rejected as nonresponsive.

*B-213473 June 25, 1984 84-1 CPD 602 - Con.
BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT*

Failure of "equal" product to meet all of the salient characteristics required by "brand name or equal" invitation properly resulted in rejection of bid as nonresponsive.

CONTRACTS--PROFITS--ANTICIPATED

There is no legal basis to pay anticipated profit to an unsuccessful bidder.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of alleged improprieties which are apparent on the face of a solicitation must be filed prior to bid opening.

*B-213504 June 25, 1984 84-1 CPD 663
BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT*

"Equal" bid in response to brand name or equal invitation for bids was properly rejected as nonresponsive where no descriptive material was submitted to establish that offered item met all salient characteristics of brand name item.

*B-213557 June 25, 1984 84-1 CPD 664
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW*

GAO will not disturb an agency's evaluation of technical proposals unless shown to be unreasonable or in violation of procurement laws and regulations.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against price scoring plan, the essential elements of which were disclosed in the request for

proposals, is untimely because it was not filed before the closing date for receipt of proposals.

*B-215462 June 25, 1984 84-1 CPD 666
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE*

Rejection of protester's bid as nonresponsive on basis that protester's bid failed to acknowledge material amendment was proper despite protester's allegation that late receipt of these amendments by GSA was not protester's fault, but due to late mailing by GSA and slow delivery by United States mail. The procuring activity is not an insurer of the delivery of bidding documents to prospective bidders and there is no allegation that GSA deliberately attempted to prevent protester from competing.

*B-195482 June 26, 1984 84-1 CPD
TRANSPORTATION--RATES--EXPLOSIVES--POINT-TO-POINT SPECIFIC
RATE APPLICABLE*

Prior decision on transportation claim is affirmed where request for reconsideration fails to demonstrate that errors of law or of fact exist in that decision which warrant its reversal or modification.

*B-210010.2 June 26, 1984 84-1 CPD 667
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--FAILURE TO FOLLOW AGENCY POLICY AND REGULATIONS*

Protest against agency's determination to retain function in-house based on Office of Management and Budget Circular A-76 cost comparison is denied where errors made by agency in computing its in-house cost estimate do not change the evaluation result.

Comparison of costs of contracting out or retaining function in-house must be based upon direct labor rates anticipated for federal employees during first year of performance period rather than federal pay rates effective during the earlier period of applicable wage determination.

*B-210010.2 June 26, 1984 84-1 CPD 667 - Con.
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--FAILURE TO FOLLOW AGENCY POLICY AND REGULATIONS*

Ordinarily, where the solicitation fails to indicate specific standards to be used in conducting a cost comparison under Office of Management and Budget Circular A-76, offerors may assume that the procuring agency will apply the published procedures in effect at the time, not those previously effective. However, where the application of the standards in effect at time would have resulted in an erroneous cost comparison, GAO will not object to the agency's use of the prior standards.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest not filed within 10 working days of when protester knew of basis of protest or, alternatively, not filed within 10 working days of agency's initial adverse action on protest, is untimely. Contention that protester did not have sufficient information to constitute basis for protest against alleged conflict of interest until results of evaluation were known is inconsistent with protester's assertion that it knew of and protested alleged conflict during the course of the procurement.

*B-213723 June 26, 1984 84-1 CPD 668
BIDS--INVITATION FOR BIDS--CLAUSES--LIQUIDATED DAMAGES--LEGALITY*

Protest against liquidated damages clause requires showing by protester that there is no possible relationship between damage rate being protested and losses in contemplation at the time the contract is initiated.

B-213723 June 26, 1984 84-1 CPD 668 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
BURDEN OF PROVING UNDUE RESTRICTION

Protester alleging that specifications overly restrict number of vehicles to be used to perform contract has burden of proof to show that the limitation and agency determination of needs are clearly unreasonable. Burden is not met where restriction is not as limited as protester asserts and protester has not demonstrated that performance is not possible with number of vehicles required.

CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--
MINIMUM WAGE, ETC. DETERMINATION--PROSPECTIVE WAGE RATE
INCREASES--CEILING PROVISION

Ceiling provision in escalation clause providing for prices to be adjusted at the beginning of each option period to reflect changes in Service Contract Act determinations constitutes a reasonable exercise of procuring activity authority. Agency may properly allocate risk of possible loss due to excessive labor cost increases on contractor.

CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--
MINIMUM WAGE, ETC. DETERMINATIONS--REVIEW AUTHORITY

Inclusion of two wage rate determinations allegedly for the same labor category is not subject to GAO or court review; a challenge to such a Service Contract Act wage determination must be processed through the administrative procedures established by the Department of Labor.

B-214829 June 26, 1984 84-1 CPD 669
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review an affirmative determination of responsibility except in limited circumstances not present here.

*B-214829 June 26, 1984 84-1 CPD 669 - Con.
CONTRACTS--FEDERAL SUPPLY SCHEDULE--SPECIFICATIONS--
MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION*

Commercial item description in solicitation covering Federal Supply Schedule requirement for exit signs does not have to have a catalog number for each arrow direction indicated on sign since activity ordering sign from schedule need only indicate the direction of the arrow, if any, on its order.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest that Buy American Act was improperly applied to bid is untimely since it was not filed with GAO within 10 working days after protester was notified that act would be applied to its bid.

*B-215010 June 26, 1984 84-1 CPD 671
CONTRACTS--PROTESTS--ISSUES IN LITIGATION*

Protest is dismissed where the material issues are before a court of competent jurisdiction, judicial relief pending a decision by this Office has not been requested, and the court has not expressed interest in receiving GAO's views.

*B-215051.2 June 26, 1984 84-1 CPD 672
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Where protester conveys in detail to the contracting officer its concern that the specifications are inadequate and its belief that the solicitation should be clarified, the agency response to this communication, denying protester's allegations concerning the specifications, is considered initial adverse agency action. Protest filed with GAO more than 10 working days after receipt of this initial adverse agency action is untimely.

B-215134.2, B-215134.3 June 26, 1984 84-1 CPD 673
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--STATE, ETC.
CERTIFICATIONS

Where solicitation does not require bidder to have a specific license, allegation that federal government could become knowing and active participant in violation of state law when successful bidder does not possess the necessary state operating authority is without merit since awardee is independent contractor and award-ee, not federal government, is responsible for its conduct.

B-215479 June 26, 1984 84-1 CPD 674
CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTEST TIMELINESS

A complaint concerning the award of a contract under a federal grant is not filed within a reasonable time where the complaint is filed 2 months after an agency's adverse decision on a complaint initially filed with the grantor agency.

B-213027 June 27, 1984 84-1 CPD 675
CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE
RESPONSIBILITY CRITERIA--WHAT CONSTITUTES

Where solicitation for installing government-furnished smoke detectors requires that a handling permit be submitted to the contracting officer's representative at the pre-construction conference, requirement is not a definitive criterion of responsibility since it is not a prerequisite to award but must be satisfied by the contractor after award but prior to performance. Since contracting officer's affirmative determination of low offeror's responsibility did not involve a definitive criterion, and there has been no showing of fraud or bad faith on the part of procuring officials, GAO dismisses the protest.

B-214467 June 27, 1984 84-1 CPD 677
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
DELIVERY PROVISIONS

Bid offering performance period of 60 days was properly rejected as nonresponsive, even though the invitation

contains seemingly conflicting provisions subject to two interpretations regarding the length of the required period, since 60 days exceeds the required performance period under either interpretation.

*B-214467 June 27, 1984 84-1 CPD 677
ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR ERRONEOUS
ADVICE, CONTRACTS ACTIONS, ETC.*

Erroneous practices of contracting personnel in prior procurements do not estop the contracting agency from rejecting a bid where required to do so by law.

*B-214945 June 27, 1984 84-1 CPD 678
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS*

GAO dismisses protest where agency advises that it has not yet decided to conduct training course, which is subject of protest, or whether to obtain it though contract even if it is to be given. In the absence of an "award" or "proposed award" of a contract, protest is premature.

*B-215068 June 27, 1984 84-1 CPD 679
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

Protest of proposed award under a solicitation is rendered academic by agency's subsequent rejection of the bid submitted by the proposed awardee.

*B-215309 June 27, 1984 84-1 CPD 680
CONTRACTS--GRANT-FUNDED PROCUREMENTS--COURT ACTION--
COMPLAINT, ETC. DISMISSED*

When material issues involved in a complaint concerning a procurement by a federal grantee are also before a state court, and the court, and the court has not expressed an interest in GAO's opinion, GAO will dismiss the complaint.

B-215350 June 27, 1984 84-1 CPD

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENICES--PROCUREMENT UNDER 8(a) PROGRAM--CONTRACTOR ELIGIBILITY--OPTIONS

Where contract award is made under section 8(a) of the Small Business Act to a firm whose 8(a) eligibility will expire shortly after contract award, contract may be extended through the exercise of options, although not as 8(a) contract, so long as the contracting agency complies with the regulations governing the exercise of options.

B-215387 June 27, 1984 84-1 CPD 681

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF COMPETENCY REQUIREMENT

Since the Small Business Administration (SBA) is empowered to determine conclusively the responsibility of a small business, GAO will not review a contracting officer's determination that a small business is nonresponsible where SBA has affirmed that determination by refusing to issue a certificate of competency.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--CONCLUSIVENESS

GAO will not review the Small Business Administration's (SBA) refusal to issue a certificate of competency in the absence of a showing that SBA acted fraudulently or in bad faith.

B-215392 June 27, 1984 84-1 CPD 682

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest concerning rejection of proposal filed with GAO more than 10 working days after protester received written notice from the agency of the basis for rejection is untimely and not for consideration on the merits.

B-215406 June 27, 1984 84-1 CPD 683
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest that firm was denied opportunity to compete in small purchase procurement, filed with GAO more than 10 working days after protester received notification of award to another firm, is untimely and not for consideration on the merits.

B-215487 June 27, 1984 84-1 CPD 684
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
NON-APPROPRIATED FUND ACTIVITIES

Procurement by the City of North Myrtle Beach, South Carolina using funds borrowed from the Farmers Home Administration is neither a federal procurement nor a procurement involving federal grant funds, and therefore protest of that procurement is not reviewable by GAO.

B-213145.3 June 28, 1984 84-1 CPD 685
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision is affirmed on request for reconsideration where consideration of fact which was erroneously stated in initial decision does not provide a basis to reverse that decision.

B-213344 June 28, 1984 84-1 CPD 686
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE INCLUSION--NOT SAME AS AWARD

Inclusion of initial technical proposal in competitive range does not necessarily establish that proposal was technically acceptable, since agency may properly include proposals that may become acceptable through discussions. Subsequent rejection of proposal as technically unacceptable because best and final offer did not cure deficiencies pointed out to offeror is upheld when protester has not disputed technical ranking or agency's commentary concerning protester's deficiencies.

*B-213344 June 28, 1984 84-1 CPD 686 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED*

Claim for proposal preparation costs is denied where government was not arbitrary in rejecting proposal.

*B-213408.2 June 28, 1984 84-1 CPD 687
GENERAL ACCOUNTING OFFICE--RECOMMENDATIONS--CONTRACTS--
TERMINATION--ERRONEOUS AWARD--AWARD TO PROTESTER IF OTHERWISE
ELIGIBLE*

Request to withdraw recommendation that agency terminate an improperly awarded contract is denied where termination costs will not be substantial and agency has not provided any other reason which would justify not terminating the contract.

*B-213739 June 28, 1984 84-1 CPD 688
BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT*

Bid proposing equal product in response to brand name or equal solicitation is nonresponsive because it failed to include sufficient descriptive data to establish that product met one of the salient characteristics specified in the solicitation.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest which is not filed within 10 working days after protester knew of its basis for protest is untimely under 4 C.F.R. 21.2(b)(2) and will not be considered.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

GAO need not consider whether procuring activity incorrectly rejected protester's bid for failure to acknowledge an amendment where bid was otherwise nonresponsive.

B-214946.2 June 28, 1984 84-1 CPD 689
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Protester requesting reconsideration of a GAO decision must present a detailed statement of the factual and legal grounds warranting reversal or modification and specify any errors of law or information not previously considered. When documents enclosed with a request for reconsideration pre-date the protest and reflect only actions that the protester initially complained of and that GAO already has found proper, the request for reconsideration will be denied.

B-215019 June 28, 1984 84-1 CPD 690
BIDS--LATE--MISHANDLING DETERMINATION--BIDS RECEIVED AT ONE
PLACE FOR DELIVERY TO ANOTHER PLACE

Bid delivered by Express Mail 4 hours before bid opening to agency's main post office, rather than to the bid opening room to which it was addressed, but in an envelope not identified as containing a bid as required by the solicitation, was properly rejected when it arrived late at the bid opening room because improper government handling was not the paramount cause of the late receipt.

B-215036 June 28, 1984 84-1 CPD 691
BIDS--MISTAKES--CORRECTION--INTENDED BID PRICE--ESTABLISHED
IN BID

Where discrepancy between minimum advertised rate for particular species of sawlogs and rate actually bid is clearly negligible, bid is responsive and pricing defect may be corrected as minor informality.

B-215482 June 28, 1984 84-1 CPD 692
CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--
ELIGIBILITY OF BIDDER--PLACE OF SUBSTANTIAL PERFORMANCE--
NOT AN LSA AT TIME OF BID OPENING

Bid which designates a place of performance that does not appear on the Department of Labor's published list of labor surplus areas (LSA) on the

date of bid opening is not eligible for LSA evaluation preference set forth in IFB. Bidder which submits bid that does not qualify for LSA preference at bid opening cannot substitute a current LSA for its proposed non-LSA and thus become eligible for evaluation preference. B-185632, Apr. 21, 1976, distinguished.

*B-212499.2 June 29, 1984 84-1 CPD 694
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--BIAS ALLEGED*

Protest that awardee benefited from favorable treatment in the evaluation of its proposal because employees of awardee were ex-employees of contracting agency is denied where protester has not shown, and record contains no evidence of, "hard facts" showing actual bias.

*B-212786, B-212955 June 29, 1984 84-1 CPD
TRANSPORTATION--RATES--TARIFFS--INCORPORATION BY REFERENCE*

A common carrier may incorporate by reference into a government rate tender additional transportation services and charges published in other tariffs or tenders. However, the government will not pay for services where the carrier has not shown that the service is additional to ones already available under the basic government tender or under GBL contract of carriage, or that the service has been performed.

*B-213000 June 29, 1984 84-2 CPD
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
UNDUE RESTRICTION--DESIGN SPECIFICATIONS*

Protest against specifications restricting procurement of heating boilers to three-pass wet-back boilers, thereby excluding protester's four-pass dry-back boilers, is sustained since agency has not established prima facie case that the restriction was reasonably related to its minimum needs.

*B-214979 June 29, 1984 84-1 CPD 695
BIDS--TIE--PROCEDURE FOR RESOLVING*

Where bidders who submitted identical low bids remain equally eligible for award after the agency's consideration of all proper factors, the tie may be resolved by drawing lots to determine the successful bidder.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protests alleging deficiencies in an invitation for bids apparent prior to bid opening must be filed with either the contracting agency or GAO before the time set for opening bids in order to be timely.

*B-214987 June 29, 1984 84-1 CPD 696
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Where requisition for equipment is canceled, protest against specifications is academic and will not be considered.

*B-214990 June 29, 1984 84-1 CPD 697
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
AWARD VALIDITY--REVIEW BY GAO*

Selection of contractor for award under section 8(a) of the Small business Act is within the discretion of the contracting agency and the Small Business Administration and will not be questioned absent a showing of fraud or bad faith on the part of government officials or allegations that SBA regulations have been violated.

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